

IN THE MATTER OF

NELSON E. WOOLMAN AND LYLE G. JACKSON, TRADING
AS POWER SEAL COMPANY

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

Docket 3014. Complaint, Dec. 11, 1936—Decision, Nov. 19, 1937

Where partners engaged in manufacture and sale of their "Power Seal" pellet form preparation for use in internal combustion engine—

Represented, in newspaper and other advertising, through pamphlets and cards distributed to customers and prospective customers, and in extensive radio advertising of their aforesaid product under its aforesaid trade-mark and name, that said "Power Seal" would restore compression in such engines and completely rejuvenate sluggish motors through sealing and reseating leaky and pitted valves, and would restore efficiency and increase power and effect savings in oil and gas, facts being use thereof had no effect upon performance of engines in which used, power and efficiency of engine would not be changed thereby, as represented by it, and aforesaid various representations were false, misleading, and deceptive;

With capacity and tendency to mislead purchasing public into erroneous and untrue belief that said "Power Seal" would produce in such engines results claimed as aforesaid, and into purchase thereof by reason of such belief, and to divert trade to it from competitors engaged in sale of similar products for similar purposes in interstate commerce and who do not misrepresent the same:

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

Before *Mr. Charles P. Vicini*, trial examiner.

Mr. Reuben J. Martin for the Commission.

Mr. Lawrence W. Allen, of Hollywood, Calif., 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 Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal Company, have been and are 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:

Complaint

PARAGRAPH 1. The respondents, Nelson E. Woolman and Lyle G. Jackson, are copartners trading under the name and style of Power Seal Company, with their principal office and place of business located at 1601 South Broadway in the city of Los Angeles within the State of California. Said respondents are now and for more than one year last past have been engaged in the manufacture and sale of an engine dope in pellet form under the trade name "Power Seal." Said respondents cause said "Power Seal" when sold to be transported to the purchasers thereof located in the State of California and in various States of the United States other than the State of California. There is now and has been for a long time, to wit, more than one year last past, a constant current of trade and commerce by said respondents in said "Power Seal" between and among the various States of the United States.

In the course and conduct of their said business, said respondents are now and for a long time, to wit, more than one year last past, have been in substantial competition in commerce between and among the various States of the United States with sundry other corporations, partnerships, firms, and individuals engaged in the interstate sale and distribution of various other engine dopes.

PAR. 2. Said respondents, in the course and conduct of their said business, as hereinbefore set out in paragraph 1, have been and now are engaged in extensive advertisement of their said product "Power Seal." As a means of furthering and aiding in the interstate sale and distribution of said product, and as media of such advertising, they have been and now are using newspapers of interstate circulation, printed cards, and circulars, and broadcasts over radio stations with interstate transmittal.

Said respondents, in their said advertisements of the product "Power Seal" have made and are now making various false, deceptive, and misleading statements concerning said product, which said statements serve to deceive and mislead the public as to the character and effectiveness of said "Power Seal." Among the statements which said respondents have used and are now using in advertisements in newspapers and in printed cards and circulars, and over the radio are the following:

1. Restores Power;
2. Seals up leaky rings and valves;
3. Fills up valve pits and abrasions;
4. Makes valve seat perfectly;
5. Power Seal restores efficiency to your motor;
6. Saves money in oil and gas;
7. Power Seal Restores Compression;

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8. Bring back power and pep with POWER SEAL;
9. Which? \$20 to \$40 for Ring and Valve job or "POWER SEAL" at \$2 installed;
10. Increases POWER—SPEED—MILEAGE;
11. Eliminates Sloppy rings;
12. Reduces Oil Pumping;
13. A rare compound which expands and plates under heat, refined and blended in our laboratory, and formed into convenient PELLETS;
14. POWER SEAL expands plating the cylinder walls and sealing the valves. It is guaranteed to restore power and compression;
15. Ends all need for valve and ring jobs;
16. Your Power Seal dealer in San Francisco * * * will apply Power Seal and fully tune your motor for only two dollars. The results will be higher compression, a smoother running motor, more power, and less carbon.
17. Power Seal will loosen carbon, expand the rings, increase compression and give you new car performance.
18. My Chevrolet pumped oil * * * giving only 12 miles per gallon of gas; after powersealing my car uses only 1 quart of oil every 600 miles and I'm getting 18 miles per gallon on gas.
19. Power Seal is forced into hot cylinders under pressure—restores lost power—reduces excessive oil pumping—increases gas mileage, and is guaranteed harmless to motors.
20. The sparkplugs in my car were continually oily. Five minutes after using Power Seal they were dry and have stayed dry for nine months!
21. Eliminate carbon knocks, oil pumping, high gasoline consumption and low power in your car without tearing down the motor.
22. When high compression motors lose their high compression, then the trouble begins. Power Seal is a harmless compound which will remove the carbon from your motor and respring your piston rings, thus giving you higher compression—more power—more gasoline mileage—and lower oil consumption. You can have a quiet running motor and new car performance at a cost of only two dollars by visiting your Power Seal dealer * * *.
23. If the things you desire are higher compression, more power, more gasoline mileage, and less oil consumption, perhaps Power Seal is the answer to your problem. It costs only two dollars and one hundred thousand California motorists say that it will correct the motor faults just mentioned. * * * Spend two dollars for a Power Seal Job and Motor tune up and you will have new car performance.
24. If your car struggles over the hills—if it pounds and coughs because of carbon—if it burns oil as fast as gasoline and burns gasoline faster than it should—it needs Power Seal. * * * It will remove carbon—increase compression—cut down fuel and oil consumption—and give you quiet running motor in just a few minutes.

Said statements and representations used by said respondents in their said advertisements, as hereinabove set out, and many other statements and representations of like import and tenor which are not set out herein but which have been used and are now being used by said respondents, have had and do now have the tendency and capacity to, and have created, and do now create, among the public

the false impression and erroneous belief that "Power Seal" is a reliable and efficient engine dope, the use of which will increase the power and efficiency of the engine, will increase the compression of the engine, and will bring about economy in operation by decreasing gasoline and oil compression.

In truth and in fact "Power Seal" is not a reliable and efficient engine dope. It will not increase the power or efficiency of the engine. It will not increase the compression of the engine. It will not bring about economy of operation by decreasing gasoline and oil consumption or by any other means.

PAR. 3. The use by the said respondents Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name and style of Power Seal Company, of the foregoing false, deceptive and misleading representations has had and does now have the capacity and tendency to and does mislead and deceive the public into the erroneous and untrue belief that Power Seal is in truth and in fact a reliable and efficient engine dope, and that by using same the user will obtain greater power and efficiency from his engine, and greater engine compression, and that the use thereof will bring about economy in operation by decreasing gasoline and oil consumption. Acting in such erroneous belief, the consuming public, and especially that portion of the public operating motor cars, have been induced and are now induced to purchase "Power Seal" in preference to other engine dopes offered for sale by manufacturers, retail dealers, and distributors. As a result of such false, deceptive and misleading representations on the part of said respondents, trade is unfairly diverted to respondents from such manufacturers, retail dealers, or distributors of other engine dope who do not misrepresent the character and quality of their respective products or the results obtained from the use thereof.

PAR. 4. Said false, deceptive, and misleading representations of said respondents contained in their advertisements have resulted in injury to respondents' competitors and to retail dealers, and in prejudice to the buying public, and constitute unfair 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."

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-

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sion, to define its powers and duties, and for other purposes," the Federal Trade Commission, on December 11, 1936, issued and served its complaint in this proceeding upon respondents, Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal Company, 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 respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission, before Chas. P. Vicini, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Lawrence W. Allen, attorney for the respondents, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint (counsel for the respondents not having filed any brief herein and not having requested oral argument); and the Commission, having duly considered the same and being now 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 respondents, Nelson E. Woolman and Lyle G. Jackson, are partners who trade and carry on business under the firm name and style of Power Seal Company. They maintain their principal place of business at 1601 South Broadway in the city of Los Angeles within the State of California. Said respondents are engaged in the manufacture and sale of a preparation in pellet form known, designated and sold under the trade name of "Power Seal," which said preparation is recommended for the treatment of internal combustion engines. Respondents recommend the use of said preparation "Power Seal" for the purpose of releasing rings in combustion engines when such rings are gummed; for the purpose of causing the valves in combustion engines to seat properly; and for the purpose of acting as a lubricant.

Respondents, in the regular course and conduct of their said business, are engaged in interstate commerce and cause said "Power Seal," when sold by them, to be transported from their place of business in Los Angeles, Calif., through and into other States of the United

States to the respective purchasers thereof. In the course and conduct of their said business, respondents are now, and have been, in competition with various persons and corporations and with other partnerships also engaged in the manufacture and sale or the sale of similar preparations recommended for like or similar uses and purposes.

PAR. 2. Respondents, in the course and conduct of their business, have caused advertisements to be published in various newspapers, have made and are making use of printed advertising matter in the form of pamphlets and cards which they have caused, and are causing, to be distributed among their customers and prospective customers, and have extensively advertised the product sold by them under the trade mark and name of "Power Seal" over various radio stations located in Los Angeles, Calif.

In said advertising, respondents have made, and are making, numerous claims and representations concerning said product known and designated as "Power Seal," the uses for which they recommend the same and the results that they claim will be accomplished by its use. Respondents claim that the use of "Power Seal" in internal combustion engines will restore compression, and will completely rejuvenate tired and sluggish motors by sealing leaky and pitted valves and reseating them; that the use of "Power Seal" will restore efficiency to ill-conditioned engines; that the use of "Power Seal" will effect savings in oil and gas consumption; and that the use of "Power Seal" will increase power, speed, and mileage.

PAR. 3. The use of "Power Seal" in internal combustion engines will not restore compression, will not rejuvenate tired and sluggish motors and will not seal leaky and pitted valves and reseal the valves. The use of "Power Seal" will not restore efficiency to ill-conditioned engines. The use of "Power Seal" will not effect savings in oil and gas consumption, and will not increase power, speed, and mileage. The use of "Power Seal" will have no effect upon engine performance in engines in which it is used, and the power and efficiency of an engine would be unchanged by the use of said "Power Seal" as described in the advertising matter of respondents.

PAR. 4. The advertisements and recommendations of the respondents, as set out herein in paragraph 2, are false, misleading, and deceptive, and have had, and do now have, the capacity and tendency to mislead the purchasing public into the erroneous and untrue belief that "Power Seal" will produce in internal combustion engines the results claimed to be produced in such advertisements, and into the purchase of respondents' said product on account of such errone-

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ous belief. The misstatements and misrepresentations in such advertisements have had, and do now have, the capacity and tendency to divert trade from such of respondents' competitors selling similar products for similar purposes in interstate commerce as do not misrepresent their respective products.

CONCLUSION

The aforesaid acts and practices of the respondents, Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal Company, are to the prejudice of the public and competitors of the respondents, 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before Chas. P. Vicini, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the brief filed herein (respondents having filed no brief and not having requested oral argument), and the Commission having made its findings as to the facts and its conclusion that said respondents, Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal Company, 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, Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal Company, or trading under any other name, their representatives, agents, and employees, in connection with the offering for sale, sale and distribution of the preparation now known and designated as "Power Seal," or any other preparation under whatever name sold composed of the same or similar ingredients and possessing similar properties, in interstate commerce or in the District of Columbia, do forthwith cease and desist from

1. Representing that the use of said preparation in internal combustion engines will restore compression, will completely rejuvenate tired and sluggish motors, will seal leaky and pitted valves and reseal

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them, will restore efficiency to ill-conditioned engines, will effect savings in oil and gas consumption, or that it will increase the power, speed or mileage of said engines;

2. Making any other similar representations of like import or effect as to the results which will accrue from the use of said preparation.

It is further ordered, That the respondents, Nelson E. Woolman and Lyle G. Jackson, copartners, trading and doing business under the name of Power Seal Company, shall, within 60 days after 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 the order hereinabove set forth.

IN THE MATTER OF

JOHN J. McCLOSKEY, INDIVIDUALLY AND TRADING AS
H. B. KIMBALL COMPANY, H. B. KIMBALL, AND
KIMBALL LABORATORIESCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2725. Complaint, Feb. 19, 1936—Decision, Nov. 20, 1937*

Where an individual engaged in sale of proprietary "Kimball Tablets," preparation for disorders and ailments of the digestive system, compounded for him by a company which he neither owned, operated, nor controlled, and sold and shipped, directly and by parcel post, chiefly, from his place of business, to purchasers at various points in various other States, and not, generally, upon doctor's prescription, but indiscriminately, to purchasers who, in reliance upon representations in its advertising, attempted self-medication without medical consultation, and in substantial competition with others engaged in sale and distribution, or manufacture, sale, and distribution, of preparations designed and sold as cures and remedies, or as treatments, for various disorders and ailments of the digestive system, in commerce among the various States and in the District of Columbia; in advertising his said tablets by pamphlets, labels, broadsides, form letters and testimonials, and in newspapers of general interstate circulation—

- (a) Represented that said tablets constituted an effective or competent remedy of cure for stomach trouble and ulcers, constipation, indigestion, dyspepsia, gastritis, and faulty elimination, and was such a remedy or cure for gas pains, intestinal toxic conditions, acidosis, bloating after meals, and dyspepsia symptoms; and
- (b) Represented that said tablets would "rid" the user of any ailment and remove cause thereof, and produce instant or positive results, and be beneficial regardless of severity or duration of ailment or previous remedies used, and that beneficial results were guaranteed, and 100,000 chronic cases had been successfully treated;

Facts being only therapeutic value of product in question was that of an antacid which, properly administered, would temporarily neutralize gastric acidity and have soothing effect on mucous lining of stomach, no one medicine or tablet alone is competent and effective remedy or cure for ailments or disorders of digestive tract, irrespective of cause thereof, certain ingredients present in said tablets, used in some palliative treatments for temporary relief of certain digestive disorders, such as gas pains, intestinal toxic conditions and others, had no effect on causative factors of such conditions and did not serve as cures or remedies therefor, said tablets would not "rid" the user of any ailment, were not beneficial regardless of duration or severity thereof, various representations above set forth were otherwise false, no chronic cases had been successfully treated or cured thereby, but persons suffering from such chronic dis-