

IN THE MATTER OF
BANNER MANUFACTURING COMPANY

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

Docket \$067. Complaint, Aug. 28, 1937¹—Decision, Jan. 31, 1938

Where a corporation engaged in distribution and sale of certain automobile accessories and other products to purchasers in other States and in District of Columbia, in substantial competition with those engaged in manufacture, distribution, and sale of similar products and others intended and designed for similar use, or in distribution and sale thereof, in commerce among the various States and in said District, and including those who do not in any way misrepresent the character and nature of their respective businesses and to purchasing public that their said products are generally safe from standpoint of corrosion for use as antifreeze products, and do not make use of other misleading representations as below set forth, or others similar thereto; in advertising certain of its antifreeze products in booklets, circulars, and show window displays distributed to purchasing public through service stations, hardware stores, accessory stores, and direct through the mails, and in other ways—

- (a) Represented that said preparations were safe and harmless solutions for general use in automobile radiators, through such statements as "THE SAFE ANTI-FREEZE," and through certifying, "FOR THE PROTECTION OF THE USER," and that product was made as below set forth "in strict conformity of standard," etc.; and
- (b) Represented, through use of word "Manufacturing" in its corporate name, and through statements, in their advertising and branding of their said antifreeze solutions, "FOR THE PROTECTION OF THE USER against inferior compounds we certify that the product on which our name appears is made in strict conformity of standard under the strict supervision of our laboratories. COMPOUNDED FOR AUTOMOBILE RADIATORS, BANNER MANUFACTURING COMPANY," that it was the manufacturer of said antifreeze preparations and that they were made in its laboratories under its strict supervision;

Facts being said antifreeze solutions would cause corrosion in cooling system in which continually used, would in many instances lessen effectiveness thereof and cause engine to overheat, and also corrosion on spark plugs, ignition wires, and other metal parts with which it came in contact, and would in many instances lessen effectiveness of ignition system through causing "shorts" therein, and said antifreeze preparations in aforesaid respects were not safe, it did not manufacture or supervise manufacture or makeup thereof, nor operate any laboratory for the purpose of manufacturing, compounding, and testing such products along scientific lines;

With result that public was led to believe that said antifreeze products were safe and harmless solutions for general use, not only from standpoint of protecting against freezing or damage due thereto, but from that of not causing corrosion in cooling system in which continually used, and other

¹ Amended.

Complaint

troubles and difficulties as aforesaid indicated, and that its said products were made under strict laboratory supervision and that it manufactured same, and of misleading and deceiving members of purchasing public into erroneous and mistaken belief that said representations were true, and into purchase of substantial quantities of its said products as result of such erroneous and mistaken beliefs thus engendered, and of unfairly diverting thereby trade to it from competitors who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations; to the injury of competition in commerce:

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

Before *Mr. Robert S. Hall*, trial examiner.

Mr. William L. Taggart for the Commission.

Mr. Benjamin N. Brody, of New York City, for respondent.

AMENDED 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 the Banner Manufacturing Company, 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Banner Manufacturing Company, is now, and has been for several years last past, a corporation organized, existing, and doing business under the laws of the State of New York with its principal place of business at 841 East Forty-third Street, Brooklyn, N. Y.

PAR. 2. The respondent has been, and is now, engaged in the business of manufacturing, distributing, and selling certain automobile accessories and other products used in the operation and upkeep of automobiles. The respondent causes these products, when sold, to be transported from its aforesaid place of business to purchasers thereof located in various States other than the State of New York and in the District of Columbia, and maintains a constant course of trade in said products so distributed and sold by it in commerce among and between the various States of the United States.

In the course and conduct of said business respondent has been, and is, in substantial competition with other corporations and with firms, and individuals and partnerships engaged in the manufacture, distribution, and sale of similar products and other products intended

Complaint

26 F. T. C.

and designed for similar use in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Some of the products marketed by respondent are anti-freeze preparations for use in automobile radiators, designated as Super-Artic, Gold Seal, Colonial, Globe, and Banner Radiator Glycerine.

PAR. 4. In the operation of its business and for the purpose of inducing the purchase of said antifreeze products on the part of members of the purchasing public respondent has made use of certain advertising literature such as booklets, circulars, and show-window displays represented to be descriptive of the various products herein named. The advertising literature herein referred to is distributed to members of the purchasing public through the medium of automobile service stations, hardware stores, automobile accessory stores, and through the United States Mails direct to prospective purchasers and in other ways.

With reference to the product designated as Banner Radiator Glycerine, the following representation is made in the advertising and branding of the product:

THE SAFE ANTI-FREEZE

* * * * *

With reference to the Banner Radiator Glycerine, and other anti-freeze preparations, namely, Super Artic, Gold Seal, Colonial, and Globe, the following representations are made in the advertising and branding of the product:

FOR THE PROTECTION OF THE USER

against inferior compounds we
certify that the product on which
our name appears is made in strict
conformity of standard under the
strict supervision of our labora-
tories

COMPOUNDED FOR AUTOMOBILE RADIATORS

BANNER MANUFACTURING COMPANY

In said statements as set for above, together with other similar statements not herein set out, and in its general advertising respondent represents, and as the result of said representations the public is led to believe; that the above named antifreeze products are safe and harmless antifreeze solutions for general use both from the standpoint of giving protection against freezing or damage due to freezing and from the standpoint of causing corrosion in the cooling system in which they are continually used and causing corrosion on spark plugs, ignition wires, and other metal parts of the automobile with which

they might come in contact when used as directed; that its products generally are made under strict laboratory supervision; and that the respondent manufactures its antifreeze products at its premises.

In truth and in fact the said Banner Radiator Glycerine and other antifreeze preparations, namely, Super-Artic, Gold Seal, Colonial, Globe, and Banner are not safe antifreeze preparations for general use from the standpoint of corrosion, as they will cause corrosion in the cooling system in which they are continually used, which will, in many instances, lessen the effectiveness of the cooling system and cause the engine to overheat; and they will cause corrosion on spark plugs, ignition wires, and other metal parts of the automobile with which such products come in contact, which will, in many instances, lessen the effectiveness of the ignition system by causing "shorts" therein. The respondent does not manufacture or supervise the manufacturing or make-up of these products, and the respondent does not operate any laboratory for the purpose of manufacturing, compounding, and testing these products along scientific lines.

PAR. 5. There are among the respondent's competitors in commerce as herein set out those who do not in any way misrepresent the character and nature of their respective businesses, and who do not in any way represent to the purchasing public that their products are generally safe for use as antifreeze products for automobile radiators when they are not, and do not make use of the other misleading representations herein set out or others similar thereto.

PAR. 6. The aforesaid false and misleading statements and representations as used by the respondent in its offering for sale and selling its various products as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quantities of respondent's various products on account of said erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade is unfairly diverted to respondent from competitors who do not, in the sale and distribution of their respective products make use of the same or similar misrepresentations. In consequence thereof injury has been, and is now being done by respondent to competition in commerce among and between the various States of the United States.

PAR. 7. The methods, acts, and practices of respondent herein set forth are all to the prejudice of the public and respondent's competitors as hereinabove alleged. Said methods, acts, and practices 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," approved September 26, 1914.

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 August 28, 1937, issued, and on September 2, 1937, served its amended complaint in this proceeding upon respondent, Banner Manufacturing Company, 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 amended complaint and the filing of respondent's answer, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the amended complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended complaint and the substitute answer, no briefs having been filed or oral argument made, 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 its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Banner Manufacturing Company, is now, and has been for several years last past, a corporation organized, existing and doing business under the laws of the State of New York with its principal place of business at 841 East Forty-third Street, Brooklyn, N. Y.

PAR. 2. The respondent has been, and is now, engaged in the business of distributing and selling certain automobile accessories and other products used in the operation and upkeep of automobiles. The respondent causes these products, when sold, to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in various States other than the State of New York and in the District of Columbia, and maintains a course of trade in said products so distributed and sold by it in commerce among and between the various States of the United States.

Findings

In the course and conduct of said business respondent has been, and is, in substantial competition with other corporations and with firms, and individuals and partnerships engaged in the manufacture, distribution, and sale of similar products and other products intended and designed for similar use, or in the distribution and sale of such products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Some of the products marketed by respondent are antifreeze preparations for use in automobile radiators, designated as Super-Artic, Gold Seal, Colonial, Globe, and Banner Radiator Glycerine.

Chemical examination of the products known as Super-Artic, Gold Seal, Colonial, and Globe showed the following results:

Nature of sample	clear, violet-colored, mobile liquid
Reaction to litmus	neutral
Specific gravity at 15.5° C	0.920
Methanol (Methyl Alcohol)	present
Residue at 105° C	0.76%
Calcium chloride (CaCl ₂ , anhydrous)	0.58%
Acetone	not detected
Borax	not detected

Probable Composition:

Methanol	49% by weight
Water	50.4% by weight
Calcium chloride, anhydrous	0.6% by weight
Coloring matter	present

This solution has a freezing point below -40° F. so it will give protection at all temperatures normally encountered. Since the solution is approximately half water, larger quantities of this material will be required for protection at temperatures down to -40° F. than is the case with denatured alcohol or with the usual grades of "anti-freeze methanol."

Chemical analysis of the Banner Radiator Glycerine shows the following:

Nature of sample	clear, pale yellow, viscous liquid
Reaction to litmus	neutral
Specific gravity at 20° C	1.240
Glycerine	present
Calcium chloride (CaCl ₂ , anhydrous)	12.9%
Sugar	not detected
Borax	not detected
Sodium nitrite (NaNO ₂)	not detected

Probable Composition:

Glycerine	47% by weight
Water	40% by weight
Calcium chloride, anhydrous	13% by weight

Findings

26 F. T. C.

This solution (undiluted) starts to freeze at -36° F. When diluted with an equal volume of water, it starts to freeze at $+8^{\circ}$ F. and, when diluted with one third its volume of water, it starts to freeze at -11° F. These figures show that the proportions recommended on the can for use at various temperatures will give protection against freezing.

The presence of calcium chloride in both these solutions is likely to give rise to electrolytic corrosion. The calcium chloride concentration in the cooling system will gradually increase due to successive additions of the antifreeze solution made necessary by evaporation of the methanol. With calcium chloride in the cooling system, care must be taken to see that none of the solution comes in contact with spark plugs or ignition wires. The salt deposited when the water evaporates is very difficult to remove and when it cools it absorbs water and becomes a good electrical conductor, causing short circuits which are not easy to locate as they disappear when the engine is heated up.

PAR. 4. In the operation of its business and for the purpose of inducing the purchase of said antifreeze products on the part of members of the purchasing public respondent has made use of certain advertising literature such as booklets, circulars, and show-window displays represented to be descriptive of the various products herein named. The advertising literature herein referred to is distributed to members of the purchasing public through the medium of automobile service stations, hardware stores, automobile accessory stores, and through the United States Mails direct to prospective purchasers and in other ways.

With reference to the product designated as Banner Radiator Glycerine, the following representation is made in the advertising and branding of the product:

THE SAFE ANTI-FREEZE

* * * * *

With reference to the Banner Radiator Glycerine, and other antifreeze preparations, namely: Super-Artic, Gold Seal, Colonial, and Globe, the following representations are made in the advertising and branding of the product:

FOR THE PROTECTION OF THE USER against inferior compounds we certify that the product on which our name appears is made in strict conformity of standard under the strict supervision of our laboratories

COMPOUNDED FOR AUTOMOBILE RADIATORS
BANNER MANUFACTURING COMPANY

In said statements as set forth above, together with other similar statements not herein set out, and in its general advertising respondent represents, and as the result of said representations the public is led to believe; that the above-named antifreeze products are safe and harmless antifreeze solutions for general use both from the standpoint of giving protection against freezing or damage due to freezing and from the standpoint of not causing corrosion in the cooling system in which they are continually used and not causing corrosion on spark plugs, ignition wires, and other metal parts of the automobile with which they might come in contact when used as directed; that its products generally are made under strict laboratory supervision; and that the respondent manufactures its antifreeze products.

In truth and in fact the said Banner Radiator Glycerine and other antifreeze preparations, namely, Super-Artic, Gold Seal, Colonial, Globe, and Banner are not safe antifreeze preparations for general use from the standpoint of corrosion, as they will cause corrosion in the cooling system in which they are continually used, which will, in many instances, lessen the effectiveness of the cooling system and cause the engine to overheat. Said preparations will cause corrosion on spark plugs, ignition wires, and other metal parts of the automobile with which they come in contact, which will, in many instances, lessen the effectiveness of the ignition system by causing "shorts" therein. The respondent does not manufacture or supervise the manufacturing or make-up of these products, and the respondent does not operate any laboratory for the purpose of manufacturing, compounding, and testing these products along scientific lines.

PAR. 5. There are among the respondent's competitors in commerce as herein set out those who do not in any way misrepresent the character and nature of their respective businesses, and who do not in any way represent to the purchasing public that their products are generally safe from the standpoint of corrosion for use as antifreeze products for automobile radiators when they are not, and do not make use of the other misleading representations herein set out or others similar thereto.

PAR. 6. The aforesaid false and misleading statements and representations as used by the respondent in its offering for sale and selling its various products as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quantities of respondent's various products as a result of said erroneous and mistaken beliefs engendered as aforesaid.

Order

26 F. T. C.

As a result thereof trade in said commerce is unfairly diverted to respondent from competitors who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations. In consequence thereof injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent Banner Manufacturing Company, a corporation, are to the prejudice of the public and of respondent's 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 TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answer thereto filed herein on December 28, 1937, by respondent admitting all the material allegations of the amended complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Banner Manufacturing Company, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of antifreeze preparations for use in automobile radiators in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that said preparations are safe and harmless solutions for general use in automobile radiators; provided, however, respondent is not prohibited from representing that said products, as now composed, when used under the suggested directions of respondent as to proper quantities thereof for designated temperatures, are effective as antifreeze solutions.

2. Representing, through the use of the word "manufacturing" or any other word or term of similar import and meaning in its corporate name, or in any other manner, or through any means or device, that it is the manufacturer of said antifreeze preparations or that said prepa-

614

Order

rations are made in its laboratories under its strict supervision unless and until it actually owns and operates or directly and absolutely controls a factory or manufacturing plant wherein such preparations are made by it under such supervision.

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

IN THE MATTER OF

HENRY R. SHAPIRO, INDIVIDUALLY, AND TRADING AS
MONARCH FASHION COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3018. Complaint, Feb. 25, 1937¹—Decision, Feb. 3, 1938*

Where an individual engaged in sale and distribution of hosiery, lingerie, men's shirts, tablecloths and napkins, and various other articles and items—
Furnished and distributed to members of the general public in practically all States and in the District of Columbia push cards, order blanks, and advertisements depicting merchandise thus being offered, and instructions, suggestions, and circulars describing his said plan of selling such merchandise, by which chance purchaser paid for chance varying amount, or nothing, dependent upon number disclosed within various disks of aforesaid cards, and received one or two pairs of women's hosiery (or three or six pairs of men's, or other merchandise thus being offered and sold, as the case might be), or nothing, depending upon success or failure in selecting feminine names corresponding to those concealed under card's red and blue seals, respectively, and he compensated by similar merchandise operator or representative, and thereby placed in the hands of others means of conducting lotteries, games of chance, or gift enterprises in distribution of his said products, with knowledge and intent that said cards had been, were, and would be used in sale and distribution thereof to public by lot or chance, contrary to public policy, and in competition with many who are opposed to use of such cards in sale and distribution of their merchandise and refrain from furnishing same;
With result that sale of similar or like merchandise by competitors was injuriously affected, and trade was diverted from them to him by reason of said furnishing of such cards or like devices, and there was a restraint upon and detriment to the freedom of fair and legitimate competition;
to the prejudice and injury of the public and competitors:
Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Henry C. Lank and *Mr. P. C. Kolinski* for the Commission.
Nash & Donnelly, of Chicago, Ill., for respondent.

AMENDED AND SUPPLEMENTAL COMPLAINT

Whereas, The Federal Trade Commission did heretofore, to wit, on December 21, 1936, issue its complaint herein charging and alleging that respondent had been guilty of unfair methods of competition in commerce, as "commerce" is defined in an Act of Congress,

¹ Amended and supplemental.