

Syllabus

IN THE MATTER OF

RALPH C. CURTISS, ALIAS C. A. DAVIS, TRADING AS
CHEMICAL PRODUCTS, MNFRS., AND MORRIS E. NEW-
MAN, TRADING AS AUTOMOTIVE TEST LABORA-
TORIES OF AMERICA.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3329. Complaint, Feb. 9, 1938—Decision, Apr. 28, 1938*

Where an individual engaged in the manufacture, sale, and distribution of two chemical automotive compounds, under designations "Hytense" and "Hypower," purportedly as gasoline power intensifier and saver, and as motor compression seal; in soliciting sale of said products through pamphlets and advertisements in newspapers and periodicals, and through descriptive circulars—

- (a) Represented that said "Hytense" was a gasoline saver and that it reduced motor knock, increased combustion and mileage, removed and prevented carbon, and lubricated the upper cylinders, and did not contain anything harmful to the motor, and would not form sediment, and included in advertising thereof facsimile of a so-called "Certificate of Merit" covering product in question, and set forth possible earnings of agents in sale thereof as "up to 400 percent profit"; and
- (b) Represented that said "Hypower" saved or rebuilt the motor, lasted 5,000 to 10,000 miles, sealed the rings, increased compression, reduced oil pumping, and saved oil and gasoline and rebuilt worn or scored cylinder walls and pistons, and reduced friction and wear, and likewise referred, in support of said representations, to said so-called "Certificate of Merit";

Facts being claims for aforesaid respective products were false in that they did not accomplish said various results, and possible earnings of agents as above set forth were fictitious and greatly exaggerated; and

Where an individual engaged, under trade-name Automotive Test Laboratories of America, in business of preparing, printing, and selling so-called "Certificates of Merit" and "Seals of Approval" to manufacturers of various products for their use in advertising same in interstate commerce, and in representing to said manufacturers generally that aforesaid "Laboratories" constituted a nationally recognized institution engaged in testing various products submitted to it by its customers; in pursuance of a conspiracy, entered into with said vendor of such "Hytense" and "Hypower" products—

- (c) Prepared and issued to said vendor so-called "Certificates of Merit" and "Seals of Approval" covering his aforesaid products, and setting forth, in substance and broadly, the gist of the claims made therefor by him and that said products had been tested in such laboratories;

Facts being giver of said certificates or seals of approval did not operate a laboratory for purpose of making tests of manufactured articles, and did not and had not made such tests, and said certificates were false and misleading in all essential respects, in that they were not result of scientific, independent, and impartial tests by competent persons, but were prepared

Complaint

26 F. T. C.

from false and misleading information furnished by aforesaid vendor of products in question to giver of said certificates for purpose of aiding said vendor in falsely and misleadingly advertising and promoting sale of said products, with full knowledge on the part of said vendor, in applying for, receiving, and using the same, that said supplier of such certificates did not make independent, impartial, and scientific tests of products in question;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into erroneous belief that all said statements and representations were true, and with result that a substantial number of purchasing public, as direct consequence of such erroneous and mistaken beliefs, induced by said acts and representations, bought said products, and trade was unfairly diverted to said vendor from competitors engaged in distribution or sale of products designed for similar usage, and who truthfully advertised properties and effects of their respective products and results that might be expected to be obtained from purchase or use thereof; to the substantial injury of competition in commerce among the various States and in the District of Columbia:

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

Mr. Merle P. Lyon for the Commission.

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 Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the style and name of Chemical Products, Mnfrs., and Morris E. Newman, individually and as sole trader under the style and name of Automotive Test Laboratories of America, hereinafter sometimes referred to as respondents Curtiss and Newman, respectively, have been, and are, using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Ralph C. Curtiss, alias C. A. Davis, is an individual trading under the style and name of Chemical Products, Mnfrs., having his office and principal place of business at 1126 North Clark Street, Chicago, Ill. The respondent, Morris E. Newman, is an individual trading under the style and name of Automotive Test Laboratories of America, having his office and principal place of business at 2024 South Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent Ralph C. Curtiss, alias C. A. Davis, sole trader under the style and name of Chemical Products, Mnfrs., for

more than 2 years last past has been engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States and the District of Columbia of certain chemical automotive compounds, one designated as "Hytense," and represented as a gasoline power intensifier and saver, and a second called "Hypower" and represented as a motor compression seal.

Said respondent causes said products, when sold, to be shipped and transported in interstate commerce from his place of business in the State of Illinois, to purchasers thereof located at various points in States of the United States other than the State of Illinois. Respondent has at all times named herein maintained a course of trade and commerce in said products, "Hytense" and "Hypower," between and among the various States of the United States and the District of Columbia.

PAR. 3. Respondent Curtiss, in the course and conduct of his said business, has been, for more than 2 years last past, and is now, engaged in competition with other individuals, corporations, firms, and partnerships engaged in the manufacture, sale, and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his said business, as hereinabove described, respondent Curtiss in soliciting the sale of, and in selling his products, "Hytense" and "Hypower," by pamphlets, advertisements inserted in newspapers, periodicals, and magazines, descriptive circulars, and otherwise, has made, and is now making, extravagant, deceptive, misleading, and false statements and representations regarding the value, efficacy and effect of his said products and the results that are achieved by using them. Among such statements used by said respondent in the advertising of his product "Hytense" in periodicals and magazines are the following:

MYSTERIOUS NEW CHEMICAL INCREASES MILEAGE

Approved by Automobile Test Labs. Tests show this secret combination of high gasoline intensifying, carbon removing, and lubricating chemicals increases auto mileage tremendously—makes high powered quick starting non-carbon fuel. Guaranteed trial offer. 500% profit. Write today.

CHEMICAL PRODUCTS MFG., 1126 N. Clark, Chicago

In circulars, pamphlets, and other advertising matter sent to prospective agents and purchasers, respondent Curtiss expands and particularizes the said claims made in his periodical advertising, stating in effect that "Hytense" is a gasoline saver, will reduce motor knock and gasoline consumption, increase combustion and mileage, removes and prevents carbon formation, lubricates upper cylinders, and is

guaranteed not to contain anything harmful to motors, and that it will not form sediment. There is included in said circulars, pamphlets and other advertising matter a facsimile of a so-called "Certificate of Merit" issued by said respondent Newman, trading under the name and style of Automotive Test Laboratories of America which is set forth with more particularity in paragraph 8 herein.

PAR. 5. In truth and in fact the representations of said respondent Curtiss, and each of them, and said respondent's advertisements and representations in pamphlets, circulars, newspapers, magazines, and other advertising matter, concerning the product "Hytense," as set forth in paragraph 4 hereof, are extravagant, misleading and false in the following respects:

Said product "Hytense" will not increase power or mileage; does not remove or prevent the formation of carbon; does not produce an antiknock gasoline; does produce and leave a sediment, and by the production of sulphuric acid may injure the engine. Further, the claims of possible earnings of agents, "500 percent profit," are fictitious and greatly exaggerated.

PAR. 6. In the course and conduct of his said business, as hereinabove described, said respondent Curtiss in soliciting the sale of and in selling his said product "Hypower," a vermiculite composition made up in a tablet form intended for placement in the cylinders through the spark plug openings, makes the following representations in the label on said product:

**HYPOWER—SAVE THE SURFACE—SAVE THE MOTOR
LASTS 10,000 MILES**

Increases compression.

Seals the rings, reduces oil pumping, saves oil and gasoline.

Rebuilds worn or scored cylinder walls and pistons.

Stops piston slaps.

Increases power.

Reduces friction and wear.

In advertisements in various specialty salesmen magazines and in circulars distributed to agents and prospective purchasers, representations are made by said respondent Curtiss as follows:

Hypower—It Rebuilds Your Motor While you Drive.

One Treatment Lasts 5,000 to 10,000 miles. Strange new sensational product offers you up to 400% profit.

A list of 10 claimed benefits to be derived from the use of "Hypower" is set out in said advertisements covering the said claims made on the label described herein, and also that the product contains nothing to harm the motor. All said advertisements feature and emphasize a "Certificate of Merit" issued by the said respondent Newman trading

under the style and name of Automotive Test Laboratories, in approval of claims made for the product, as set forth with more particularity in paragraph 8 herein.

PAR. 7. In truth and in fact the representations of said respondent Curtiss in pamphlets, circulars, newspapers, magazines and other advertising matter, and each of them, as set forth in paragraph 6 hereof, concerning the product "Hypower," are extravagant, false, and misleading in the following respects:

Said product "Hypower" will not save the motor or rebuild the motor. It will not last 5,000 to 10,000 miles. It does not increase compression, seal the rings, reduce oil pumping, or save oil and gasoline. It does not rebuild worn or scored cylinder walls and pistons or stop piston slaps. It does not increase power or reduce friction and wear. The claims of possible earnings of agents—"up to 400 percent profit," are greatly exaggerated.

PAR. 8. Said respondent Morris E. Newman, trading under the style and name of Automotive Test Laboratories of America, is now and for more than 2 years last past has been, engaged in the business of preparing, printing and selling so-called "Certificates of Merit" and "Seals of Approval" to manufacturers of various products to be used by said manufacturers in advertising their products sold in interstate commerce.

Respondent causes his said "Certificates of Merit" and "Seals of Approval," when sold, to be transported from his place of business in the State of Illinois to the purchasers thereof located in the various States of the United States other than the State of Illinois.

In the course and conduct of his said business said respondent Newman represents to said manufacturers generally that the said Automotive Test Laboratories of America is a nationally recognized institution engaged in the business of testing various manufactured products submitted to it by its customers when in truth and in fact said respondent does not operate a laboratory for the purpose of making tests of manufactured articles nor does he make such tests.

PAR. 9. Said respondent Curtiss and said respondent Newman have entered into a combination and conspiracy with each other to falsely and misleadingly advertise and misrepresent the said products "Hytense" and "Hypower" manufactured and sold by the said respondent Curtiss in his said business as aforesaid. Pursuant to said conspiracy, said respondents have performed the following acts, to wit:

Respondent Newman, in the name of the said Automotive Test Laboratories of America, issued a so-called "Certificate of Merit" for the said product "Hytense" manufactured by said respondent Curtiss certifying that the said product "Hytense" had been tested in the

Complaint

26 F. T. C.

laboratory of the said Automotive Test Laboratories of America and was thereby awarded the official "Seal of Approval." Said certificate contained the following statement:

Hytense, a gasoline intensifying, carbon preventive and heating resisting cylinder lubricant to increase combustion, lubrication, mileage and power. Provides easier starting in cold weather. Contains no acids, will not harm the motor is soluble in gasoline, kerosene, or distillate. No sediment.

Said respondent Newman, in the name of the Automotive Test Laboratories of America, also issued a so-called "Certificate of Merit" for the said product "Hypower" manufactured by said respondent Curtiss, certifying that said product "Hypower" had been tested in the laboratories of the said Automotive Test Laboratories of America, and had been awarded the official "Seal of Approval." Said certificate contained the following statement:

HYPOWER, for use in motor and placed in same through spark plug openings. Stops oil pumping by the rings, seals the rings and valves, stops piston slap, increases compression and provides a builder for worn pistons and cylinders. Contains nothing to harm the motor or any part of same.

Said "Certificates of Merit" are false and misleading in all essential respects in that they are not the result of scientific, independent, and impartial tests by competent persons, but were prepared from false and misleading information furnished by said respondent Curtiss to said respondent Newman for the purpose of assisting and aiding said respondent Curtiss in falsely and misleadingly advertising and promoting the sale of his said products "Hytense" and "Hypower" manufactured and sold by him as aforesaid.

Said respondent Curtiss applied for, received, and used the said "Certificates of Merit" and "Seals of Approval" for said products "Hytense" and "Hypower" in the sale of said products, as hereinbefore described, with full knowledge of the fact that said respondent Newman did not make an independent, impartial, and scientific test of said products.

PAR. 10. Each and all of the false and misleading statements and misrepresentations made by said respondent Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the style and name of Chemical Products, Mnfrs., and respondent Morris E. Newman, individually and as sole trader under the style and name of Automotive Test Laboratories of America in the manner described herein in paragraphs 4 to 9 inclusive, in designating and describing the said products "Hytense" and "Hypower," and the results to be obtained from the use of said products in offering for sale and selling said products, have had, and still have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into

1209

Findings

the erroneous belief that all of said statements and representations are true. As a direct consequence of said mistaken and erroneous beliefs induced by said acts and representations of said respondents, as hereinabove set out, a substantial number of the purchasing public have purchased said products "Hytense" and "Hypower" with the result that trade has been unfairly diverted to said respondent Curtiss from competitors engaged in the business of distributing or selling products designed for similar usage who truthfully advertise and represent the properties and effects of their respective products and the results that may be expected to be obtained from the purchase or use thereof. As a result thereof, injury has been, and is now being, done by the said respondents to commerce between and among the various States of the United States and the District of Columbia.

PAR. 11. The above and foregoing acts, practices, and representations of the respondents have been, and are all to the prejudice and injury of the public and said respondents' competitors as hereinabove alleged. Said acts, practices and representations 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 the Federal Trade Commission Act, the Federal Trade Commission, on February 9, 1938, issued, and subsequently served, its complaint in this proceeding upon the respondents, Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the name and style of Chemical Products, Mnfrs. and Morris E. Newman, individually and as sole trader under the style and name of Automotive Test Laboratories of America, 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 separate answers by the respondents, the Commission, by order entered herein, granted the motion of the respondents, Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the style and name of Chemical Products, Mnfrs. to withdraw his original answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true, and waiving the taking of further evidence, and all other intervening procedure, which substituted answer was duly filed in the office of the Commission, a similar answer having been theretofore filed in the office of the Commission by the respondent, Morris E. Newman, individually, and as sole trader under the

style and name of Automotive Test Laboratories of America; and thereafter this proceeding regularly came on for final hearing before the Commission, on the said complaint and the several answers and substitute answers of the respondents, 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 respondent, Ralph C. Curtiss, alias C. A. Davis, is an individual trading under the style and name of Chemical Products, Mnfrs., having his office and principal place of business at 1126 North Clark Street, Chicago, Ill. The respondent, Morris E. Newman, is an individual trading under the style and name of Automotive Test Laboratories of America, having his office and principal place of business at 2024 South Wabash Avenue, Chicago, Ill.

PAR. 2. Respondent Ralph C. Curtiss, alias C. A. Davis, sole trader under the style and name of Chemical Products, Mnfrs., for more than 2 years last past has been engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States and the District of Columbia of certain chemical automotive compounds, one designated as "Hytense," and represented as a gasoline power intensifier and saver, and a second called "Hypower" and represented as a motor compression seal.

Said respondent causes said products, when sold, to be shipped and transported in interstate commerce from his place of business in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State of Illinois. Respondent has at all times named herein maintained a course of trade and commerce in said products, "Hytense" and "Hypower," between and among the various States of the United States and the District of Columbia.

PAR. 3. Respondent Ralph C. Curtiss, in the course and conduct of his said business, has been, for more than 2 years last past, and is now, engaged in competition with other individuals, corporations, firms, and partnerships engaged in the manufacture, sale, and distribution of similar products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his said business, as hereinabove described, respondent Ralph C. Curtiss, in soliciting the sale of, and in selling his products, "Hytense" and "Hypower," by

1209

Findings

pamphlets, advertisements inserted in newspapers, periodicals, and magazines, descriptive circulars, and otherwise, has made, and is now making, extravagant, deceptive, misleading, and false statements and representations regarding the value, efficacy, and effect of his said products and the results that are achieved by using them. Among such statements used by said respondent in the advertising of his product "Hytense" in periodicals and magazines are the following:

MYSTERIOUS NEW CHEMICAL INCREASES MILEAGE

Approved by Automobile Test Labs. Tests show this secret combination of high gasoline intensifying, carbon removing, and lubricating chemicals increases auto mileage tremendously—makes high powered quick starting non-carbon fuel. Guaranteed trial offer. 500% profit. Write today.

CHEMICAL PRODUCTS MFG., 1126 N. Clark, Chicago

In circulars, pamphlets, and other advertising matter sent to prospective agents and purchasers, respondent Ralph C. Curtiss expands and particularizes the said claims made in his periodical advertising, stating in effect that "Hytense" is a gasoline saver, will reduce motor knock and gasoline consumption, increase combustion and mileage, remove and prevent carbon formation, lubricate upper cylinders, and is guaranteed not to contain anything harmful to motors, and that it will not form sediment. There is included in said circulars, pamphlets, and other advertising matter a facsimile of a so-called "Certificate of Merit" issued by said respondent Morris E. Newman, trading under the name and style of Automotive Test Laboratories of America, which is set forth with more particularity in paragraph 8 herein.

PAR. 5. In truth and in fact the representations of said respondent Ralph C. Curtiss, and each of them, and said respondent's advertisements and representations in pamphlets, circulars, newspapers, magazines, and other advertising matter, concerning the product "Hytense," as set forth in paragraph 4 hereof, are extravagant, misleading, and false in the following respects:

Said product "Hytense" will not increase power or mileage; does not remove or prevent the formation of carbon; does not produce an antiknock gasoline; does produce and leave a sediment, and by the production of sulphuric acid may injure the engine. The claims of possible earnings of agents are fictitious and greatly exaggerated.

PAR. 6. In the course and conduct of his said business, as hereinabove described, said respondent Ralph C. Curtiss, in soliciting the sale of and in selling his said product "Hypower," a vermiculite composition made up in a tablet form intended for placement in the

Findings

26 F. T. C.

cylinders through the spark plug openings, makes the following representations in the label on said product:

**HYPOWER—SAVE THE SURFACE—SAVE THE MOTOR
LASTS 10,000 MILES**

Increases compression.

Seals the the rings, reduces oil pumping, saves oil and gasoline.

Rebuilds worn or scored cylinder walls and pistons.

Stops piston slaps.

Increases power.

Reduces friction and wear.

In advertisements in various specialty salesmen magazines and in circulars distributed to agents and prospective purchasers, representations are made by said respondent Ralph C. Curtiss as follows:

Hypower—It Rebuilds Your Motor While you Drive.

One Treatment Lasts 5,000 to 10,000 miles.

Strange new sensational product offers you up to 400% profit.

A list of 10 claimed benefits to be derived from the use of "Hypower" is set out in said advertisements covering the said claims made on the label described herein, and also that the product contains nothing to harm the motor. All said advertisements feature and emphasize a "Certificate of Merit" issued by the said respondent Morris E. Newman, trading under the style and name of Automotive Test Laboratories, in approval of claims made for the product, as set forth with more particularity in paragraph 8 herein.

PAR. 7. In truth and in fact the representations of said respondent Ralph C. Curtiss in pamphlets, circulars, newspapers, magazines, and other advertising matter, and each of them, as set forth in paragraph 6 hereof, concerning the product "Hypower," are extravagant, false, and misleading in the following respects:

Said product "Hypower" will not save the motor or rebuild the motor. It will not last 5,000 to 10,000 miles. It does not increase compression, seal the rings, reduce oil pumping, or save oil and gasoline. It does not rebuild worn or scored cylinder walls and pistons or stop piston slaps. It does not increase power or reduce friction and wear. The claims of possible earnings of agents—"up to 400% profit," are greatly exaggerated.

PAR. 8. Said respondent Morris E. Newman, trading under the style and name of Automotive Test Laboratories of America, is now, and for more than 2 years last past has been, engaged in the business of preparing, printing, and selling so-called "Certificates of Merit" and "Seals of Approval" to manufacturers of various products to be used by said manufacturers in advertising their products sold in interstate commerce.

1209

Findings

Respondent causes his said "Certificates of Merit" and "Seals of Approval," when sold, to be transported from his place of business in the State of Illinois to the purchasers thereof located in the various States of the United States other than the State of Illinois.

In the course and conduct of his said business said respondent Morris E. Newman represents to said manufacturers generally that the said Automotive Test Laboratories of America is a nationally recognized institution engaged in the business of testing various manufactured products submitted to it by its customers, when in truth and in fact said respondent does not operate a laboratory for the purpose of making tests of manufactured articles, nor does he make such tests.

PAR. 9. Said respondent Ralph C. Curtiss and said respondent Morris E. Newman have entered into a combination and conspiracy with each other to falsely and misleadingly advertise and misrepresent the said products "Hytense" and "Hypower" manufactured and sold by the said respondent Ralph C. Curtiss in his said business as aforesaid. Pursuant to said conspiracy, said respondents have performed the following acts, to wit:

Respondent Morris E. Newman, in the name of Automotive Test Laboratories of America, issued a so-called "Certificate of Merit" for the said product "Hytense," manufactured by said respondent Ralph C. Curtiss, certifying that the said product "Hytense" had been tested in the laboratory of said Automotive Test Laboratories of America, and was thereby awarded the official "Seal of Approval." Said certificate contained the following statement:

Hytense, a gasoline intensifying, carbon preventive and heating resisting cylinder lubricant to increase combustion, lubrication, mileage, and power. Provides easier starting in cold weather. Contains no acids, will not harm the motor, is a soluble in gasoline, kerosene, or distillate. No sediment.

Said respondent Morris E. Newman, in the name of the Automotive Test Laboratories of America, also issued a so-called "Certificate of Merit" for the said product "Hypower" manufactured by said respondent Ralph C. Curtiss, certifying that said product "Hypower" had been tested in the laboratories of the said Automotive Test Laboratories of America, and had been awarded the official "Seal of Approval." Said certificate contained the following statement:

HYPOWER, for use in motor and placed in same through spark plug openings. Stops oil pumping by the rings, seals the rings and valves, stops piston slap, increases compression and provides a builder for worn pistons and cylinders. Contains nothing to harm the motor or any part of same.

Said "Certificates of Merit" are false and misleading in all essential respects in that they are not the result of scientific, independent, and

Conclusion

26 F. T. C.

impartial tests by competent persons, but were prepared from false and misleading information furnished by said respondent Ralph C. Curtiss to said respondent Morris E. Newman for the purpose of assisting and aiding said respondent Ralph C. Curtiss in falsely and misleadingly advertising and promoting the sale of his said products "Hytense" and "Hypower," manufactured and sold by him as aforesaid.

Said respondent Ralph C. Curtiss applied for, received, and used the said "Certificates of Merit" and "Seals of Approval" for said products "Hytense" and "Hypower" in the sale of said products, as hereinbefore described, with full knowledge of the fact that said respondent Morris E. Newman did not make an independent, impartial, and scientific test of said products.

PAR. 10. Each and all of the false and misleading statements and misrepresentations made by said respondent Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the style and name of Chemical Products, Mnfrs., and respondent Morris E. Newman, individually and as sole trader under the style and name of Automotive Test Laboratories of America, in the manner described herein in paragraphs 4 to 9 inclusive, in designating and describing the said products "Hytense" and "Hypower," and the results to be obtained from the use of said products in offering for sale and selling said products, have had, and still have, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said statements and representations are true. As a direct consequence of said mistaken and erroneous beliefs induced by said acts and representations of said respondents, as hereinabove set out, a substantial number of the purchasing public have purchased said products "Hytense" and "Hypower" with the result that trade has been unfairly diverted to said respondent Ralph C. Curtiss from competitors engaged in the business of distributing or selling products designed for similar usage who truthfully advertise and represent the properties and effects of their respective products and the results that may be expected to be obtained from the purchase or use thereof. As a result thereof, substantial injury has been, and is now being, done by the said respondents to competition in commerce between and among the various States of the United States and the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents Ralph C. Curtiss and Morris E. Newman have been, and are, all to the prejudice and injury of the public and said respondents' competitors, and

1209

Order

constitute unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answers and substitute answer of respondents, in which answers and substitute answer respondents admit all the material allegations of the complaint to be true, and state that they waive hearing on the charges set forth in the complaint and that, without further evidence or other intervening procedure, the Commission may issue and serve upon them findings as to the facts and conclusion and an order to cease and desist from the violations of law charged in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent Ralph C. Curtiss, alias C. A. Davis, individually and as sole trader under the name and style of Chemical Products, Mnfrs., or trading under any other name, in connection with the offering for sale, sale, and distribution of the products now known as and sold under the name of Hytense and Hypower, or the same or similar products under whatever name sold, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing directly or indirectly:

1. That the product "Hytense":

- (a) Is a gasoline saver,
- (b) Reduces motor knock and gasoline consumption,
- (c) Increases combustion and mileage,
- (d) Removes and prevents carbon formation,
- (e) Lubricates upper cylinders,
- (f) Does not contain anything harmful to motors, and
- (g) Will not form sediment.

2. That the product "Hypower":

- (a) Saves the motor or rebuilds the motor,
- (b) Lasts 5,000 to 10,000 miles,
- (c) Increases compression,
- (d) Seals the rings,
- (e) Reduces oil pumping,
- (f) Saves oil and gasoline,
- (g) Rebuilds worn or scored cylinder walls and pistons, and
- (h) Reduces friction and wear.

Order

26 F. T. C.

It is further ordered, That the respondent Morris E. Newman, individually, or as sole trader under the style and name of Automotive Test Laboratories of America, or under any other trade name, do forthwith cease and desist from:

1. Preparing and issuing to the respondent Ralph C. Curtiss so-called "Certificates of Merit" and "Seals of Approval" covering products sold by the respondent Ralph C. Curtiss for use by him in advertising his said products in interstate commerce, unless and until respondent owns and conducts a laboratory and employs trained scientists and technicians, and is equipped to test and does test said products in the manner and with the methods used by recognized scientific laboratories.

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

Syllabus

IN THE MATTER OF

WALDO W. TOWNSLEY, DOING BUSINESS AS SERVAL-SYSTEM

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 3197. Complaint, Aug. 6, 1937—Decision, Apr. 29, 1938

Where an individual engaged in sale and distribution of bookkeeping system known as "Serval-System," designed primarily for farmers and consisting of a card system for items of expense and income, a pocket adding machine, a cardboard file and a cabinet, together with instructions for use, and price-marked to sell for \$7.50, regular price, or \$5.75, special price; in connection with a plan of selling said systems in group lots to so-called distributors or territorial supervisors, usually farmers, for resale to ultimate purchaser, under contracts covering territory assigned to supervisor, maximum number of systems he undertook to purchase, and total amount of cash deposit paid on number of sets contracted for—

- (a) Represented, directly and through agents, that said systems were easy to sell, and that he had sold a large number thereof in the community and displayed signed orders of a number of farmers with whom prospect was acquainted, and bank deposit slips indicating sizeable accounts in local banks as result of sale of systems locally, and falsely represented that local bankers and business men had endorsed said system and, in support of such representation, displayed one of systems containing advertisements from a number of the local bankers and business men; facts being systems were not easy to sell, sales made to farmers in prospect's community, evidenced as aforesaid, were not made at either the regular or special price as prospect was led to believe, but at substantially lower prices, and bank deposits, evidenced as aforesaid, were not made as a result of such sales but from funds obtained by him from other sources, and said systems were not thus endorsed;
- (b) Represented that he was in search of a local distributor to supervise sales of such systems in certain territories and that supervisor was not required to put up any cash or required to do any selling, and that he would organize and train sales forces to do the actual selling, and that all supervisor was required to do was to take in the money, pay the salesmen their commissions, deduct his own share, and send the balance to him; facts being any member of any community could become his local distributor if he had sufficient capital to make required advance payment on required number of systems when contract was signed, at which time supervisor was required to advance a cash deposit of 50 cents on each system contracted for, on basis of estimate as to probable number that could be sold in designated territory, he did not actually grant any exclusive territory if other sales could be made to other distributors therein, and representations that supervisor was not required to do any actual selling, etc., as above set forth, were false, and said individual, once contract was signed and cash deposit or initial payment specified made, left community, without training any sales force, never to return, and so-called supervisor was left to dispose of said systems in any manner possible; and