

## Syllabus

## IN THE MATTER OF

## THE PERFECT MANUFACTURING COMPANY, INC., TRADING AS KAR-NU COMPANY AND NO-FLATZ COMPANY

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

*Docket 3440. Complaint, May 23, 1938—Decision, Aug. 31, 1938*

Where a corporation respectively engaged, under trade names Kar-Nu Co. and No-Flatz Co., in manufacture of liquid automobile finishing preparation and liquid product for use in tire tubes to prevent punctures, and in the sale and distribution of its said products to retailers, salesmen, and agents for sale to purchasing public in the different States and in the District of Columbia, in competition with many others engaged in sale of similar products in interstate commerce who truthfully represent the qualities thereof: in advertising its said preparations in newspapers and periodicals circulated in such commerce, and through circulars and pamphlets distributed among prospective purchasers—

- (a) Represented that its said "Kar-Nu" was a "miracle discovery," and that an application thereof to the finish of an automobile would cause discoloration and sun fade to disappear instantly, and would finish autos like new and give a result equal in beauty to a repaint job costing from \$25 to \$75, and that there was nothing in the world just like it, facts being transparent liquid in question was not such a discovery, there were number of products on the market of similar composition and for similar use, it could not add color where color had disappeared, and would not accomplish results claimed for it as above set forth:
- (b) Represented that its "No-Flatz" was an amazing new discovery which rendered tires absolutely puncture-proof, ending flat tires forever, and that use thereof in an inner tube mended punctures instantly and permanently without patching, and that when in use, hole resulting from puncture of tube by nail or other sharp object would remain completely and permanently sealed, facts being product in question was not a sensational, amazing, new discovery, and would not accomplish results claimed for it as above set forth: and
- (c) Represented that its aforesaid preparations had been tested and approved by the Automotive Test Laboratory of America, through reproduction in its advertising of document entitled "Certificate of Merit," certifying that preparations in question had "been tested" in the laboratories of, and approved by, the Automotive Test Laboratory of America, together with statements describing, or purporting to describe, the qualities of said respective products, facts being certificates in question did not reflect results of recognized scientific tests of products named therein, such Automotive Test Laboratory of America was not equipped with any machinery or scientific instruments that could be used for making tests on aforesaid or other materials, and maintained no staff of experts or chemists who conducted any experiments to determine quality of products involved, and so-called "Certificates of Merit" were false and fraudulent and tended and had capacity to

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mislead and deceive purchasing public into belief that each of such certificates was result of honest experimentation on product mentioned therein;

With tendency and capacity, through aforesaid acts and practices, to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and to cause, as a result of such belief, number of purchasing public to buy its said products and thereby unfairly divert trade in interstate commerce to it from its competitors:

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

*Mr. Clark Nichols* for the Commission.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Perfect Manufacturing Co., a corporation, trading as Kar-Nu Co. and No-Flatz Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Perfect Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 3317 Madison Road, in the city of Cincinnati, Ohio. It is also trading under the names Kar-Nu Co. and No-Flatz Co. and various other names.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged, as hereinafter described, in the business of manufacturing and selling to retail dealers, agents, and salesmen in various parts of the United States, through the use of various trade name companies, various appliances, products, and preparations. Among the appliances, products, and preparations, so manufactured and sold by respondent, is a liquid automobile finishing preparation designed for use on automobiles of any color, known and designated as "Kar-Nu"; and a liquid preparation to be placed inside of the inner tube of any automobile tire for the purpose of preventing punctures in the tire, known and designated as "No-Flatz." Both of said products are sold to retail dealers, salesmen, and agents in various parts of the United States, for ultimate resale to members of the purchasing public, and respondent causes the said preparations, when sold, to be transported from its place of business in the State of Ohio to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations, so sold and distributed by it in commerce, among and

between the various States of the United States and in the District of Columbia.

PAR. 3. During all the times mentioned herein, other corporations, and individuals, firms, and partnerships located in various States of the United States, have been, and are, engaged in the business of selling and distributing various preparations compounded and used for the same general purpose for which respondent represents its products, Kar-Nu and No-Flatz, to be effective, as herein set forth. Such other corporations and individuals, firms, and partnerships have caused, and do now cause, their said preparations, when sold, to be transported from various States of the United States, to, into, and through States other than the State of the origin of such shipments and to the District of Columbia.

PAR. 4. In the course and conduct of its business in said commerce, as aforesaid, and to create a demand on the part of the purchasing public for, and to induce the purchase of, said products, the respondent has placed advertisements in newspapers and magazines circulated in the various States of the United States and in the District of Columbia, and has distributed circulars and pamphlets among prospective purchasers, containing representations concerning the nature and efficacy of said products. Among others, the following representations have been so circulated among prospective purchasers and so used by the respondent:

Kar-Nu will finish autos like new.

Kar-Nu will give a result equal in beauty to a repaint job costing from \$25 to \$75.

There is nothing in the world just like Kar-Nu.

A miracle discovery! A transparent magic-like fluid with which anyone can refinish any color automobile easily, quickly and economically without polishing, waxing, rubbing or painting. Just wipe it on with a cloth! Immediately dullness, discoloration, shabbiness and sunfade DISAPPEAR INSTANTLY, as if by magic, the old paint is covered with a tough elastic coat which is transparent, self-leveling and self-polishing. "Kar-Nu" actually fills in the pores and rebuilds the old finish.

This Certifies that Kar-Nu manufactured by Kar-Nu Company has been tested in our Laboratories and having successfully passed the applied tests, is hereby awarded the official seal of approval.

Kar-Nu, an automobile refinisher that wipes on with a cloth. Gives a long-lasting, brilliant new car lustre to dull or faded surfaces. Contains no abrasive or harmful ingredients. Kar-Nu contains no wax and is in no sense a polish. Will withstand varied temperatures.

Tested and approved by

The Automotive Test Laboratories of America

No-Flatz is an amazing new discovery.

No-Flatz is absolutely puncture-proof, ending flat tires forever.

No-Flatz fixes punctures instantly and permanently without patching.

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When No-Flatz is used, the hole will remain completely and permanently sealed, after you pull the nail out.

This Certifies that No-Flatz manufactured by The No-Flatz Company has been tested in our Laboratories and having successfully passed the applied tests, is hereby awarded the official seal of approval.

No-Flatz, placed in tubes, quickly and easily makes tires puncture-proof. It instantly fills up and permanently seals leaks and holes made by tacks, wires, nails, or other pointed objects that would otherwise cause flat tires. This compound is harmless to tires, tubes, hands or clothing, and is not affected by extremes of heat or cold. Lasts indefinitely. Increases life of tires and tubes by maintaining even pressure and reducing heat from friction.

Tested and approved by  
The Automotive Test Laboratories of America

Through the aforesaid representations, and others of similar import and meaning likewise used by respondent, the respondent represents and implies that the application of the product Kar-Nu to the finish of a used automobile will create a finish similar and equal to the finish on a new automobile; that the finish produced by the use of the product Kar-Nu is equal to that produced by a repaint job ranging in cost from \$25 to \$75; that there is no product on the market like the product Kar-Nu, and that it is a new, sensational, and "a miracle" discovery; that the application of the product Kar-Nu to the finish of an automobile will cause sun fade and other discolorations of the original finish to disappear instantly; and that the product Kar-Nu has been submitted to a properly equipped testing laboratory for test in the manner recognized by modern technicians as suitable for the testing of such a product, and that such a test has been made with the results indicated in the so-called certificate issued by The Automotive Test Laboratories of America; and that the product Kar-Nu has been approved by such a laboratory.

By the means and in the manner aforesaid the respondent represents and implies that the product No-Flatz is a sensational, amazing new discovery; that its use renders a tube absolutely puncture-proof, thereby ending flat tires forever; that the product No-Flatz fixes punctures in tubes instantly and permanently without patching; that when the product No-Flatz is used a hole made in the tube by a nail or other sharp object will become and remain completely and permanently sealed; that the product No-Flatz has been submitted to a properly equipped testing laboratory for test in the manner recognized by modern technicians as suitable for the testing of such a product, and that such a test has been made with the results indicated in the so-called certificate issued by The Automotive Test Laboratories of America; and that the product No-Flatz has been approved by such a laboratory.

The claims and representations so made by the respondent as to the properties of said products are grossly exaggerated and greatly exceed those which might truthfully be made for said products.

In truth and in fact, an application of the product Kar-Nu to the finish of a used automobile will not create a finish similar or equal to the finish on a new automobile; the finish produced by the use of the product Kar-Nu is not equal to the finish produced by a repaint job ranging in cost from \$25 to \$75; the product Kar-Nu is not a new, sensational, or "a miracle" discovery, and there are a number of products on the market similar to, and as useful as, the product Kar-Nu, and the application of the product, Kar-Nu to the finish of an automobile will not cause sun fade and other discolorations of the original finish to disappear instantly or at all.

In truth and in fact, the product No-Flatz is not a sensational, amazing new discovery its use will not and does not render a tube absolutely puncture-proof, thereby ending flat tires forever; the product No-Flatz does not fix punctures in tubes instantly and permanently without patching; and the use of the product No-Flatz will not cause a hole made in a tube by a nail or other sharp object to become and remain completely and permanently sealed.

In truth and in fact, neither of said products has been submitted to a properly equipped testing laboratory for the type of test recognized by modern technicians as suitable for the testing of such products, and no suitable test has been made by a properly equipped testing laboratory showing the results stated in said purported certificates issued by The Automotive Test Laboratories of America, nor has a properly equipped testing laboratory approved said products as capable of producing the results claimed by the respondent. The Automotive Test Laboratories of America is not, and is not recognized by technicians as, a standard laboratory possessing the necessary equipment and manned by the necessary technicians so as to make scientific tests of such products as Kar-Nu and No-Flatz.

PAR. 5. Among the competitors of the respondent offering for sale and selling in said commerce products used and useful for the purposes for which the respondent sells and recommends its said products Kar-Nu and No-Flatz are many who truthfully advertise and represent their said products and the properties and efficacy thereof.

PAR. 6. The acts and practices of the respondent in using said representations and implications in the course and conduct of its said business in said commerce, in connection with the offering for sale, sale, and distribution of said products Kar-Nu and No-Flatz, have the tendency and capacity to, and do, confuse and mislead members of the purchasing public and cause them mistakenly and erroneously to be-

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lieve that said representations and implications are true and cause them, because of said mistaken and erroneous belief, engendered as aforesaid, to purchase a substantial quantity of respondent's said products. Thereby, substantial trade in said commerce is diverted unfairly to the respondent from its competitors as described in paragraph 5 hereof, to their injury and to the injury of the public.

PAR. 7. The aforesaid acts and practices of the respondent are all 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 the Federal Trade Commission Act.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 23rd day of May 1938 issued, and on the 24th day of May 1938 served, its complaint in this proceeding upon the respondent, The Perfect Manufacturing Co., Inc., trading under the firm name and style Kar-Nu Co. and No-Flatz Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On June 15, 1938, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as a fact in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statements of fact to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, 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

PAR. 1. Respondent, The Perfect Manufacturing Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 3317 Madison Road, in the city of Cin-

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## Findings

cinnati, Ohio. Respondent is engaged, under the trade name Kar-Nu Co., in the business of manufacturing and selling a liquid automobile finishing preparation, and under the name No-Flatz Co., of manufacturing and selling a liquid preparation placed in automobile tire tubes for the purpose of preventing punctures.

PAR. 2. Respondent is engaged in interstate commerce and sells its products to retail dealers, salesmen, and agents for ultimate sale to the purchasing public in the different States of the United States and in the District of Columbia. Respondent is in competition with many other corporations, firms, and individuals selling similar products in interstate commerce who truthfully represent the qualities of their products.

PAR. 3. Respondent has placed advertisements in newspapers and magazines circulated in interstate commerce and has distributed circulars and pamphlets among prospective purchasers, containing the following representations:

Kar-Nu will finish autos like new.

Kar-Nu will give a result equal in beauty to a repaint job costing from \$25 to \$75.

There is nothing in the world just like Kar-Nu.

A miracle discovery; a transparent, magic-like fluid with which anyone can refinish any color automobile easily, quickly, and economically, without polishing, waxing, rubbing, or painting. Just wipe it off with a cloth! Immediately dullness, discoloration, shabbiness, and sun-fade disappear. Instantly, as if by magic, the old paint is covered with a tuff elastic coat which is transparent, self-leveling and self-polishing. Kar-Nu actually fills in the pores and rebuilds the old finish.

The respondent also used in such advertising a document entitled "Certificate of Merit," in the body of which, among other statements, the following appeared:

This certifies that Kar-Nu manufactured by Kar-Nu Company has been tested in our Laboratories, and having successfully passed the applied tests, is hereby awarded the official seal of approval.

Kar-Nu, an automobile refinisher that wipes on with a cloth. Gives a long lasting, brilliant, new car lustre to dull or faded surfaces. Contains no abrasive or harmful ingredients. Kar-Nu contains no wax and is in no sense a polish. Will withstand varied temperatures.

Tested and approved by  
The Automotive Test Laboratory of America

In connection with the promotion of sale and distribution of the article called No-Flatz the following statements were used in such advertising:

No-Flatz is a new, amazing discovery.

No-Flatz is absolutely puncture-proof, ending flat tires forever.

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No-Flatz fixes punctures instantly and permanently without patching.

When No-Flatz is used the hole will remain completely and permanently sealed, after you pull the nail out.

The following "Certificate of Merit" pertaining to No-Flatz was used in such advertising:

This certifies that No-Flatz manufactured by the No-Flatz Company has been tested in our laboratories and having successfully passed the applied tests, is hereby awarded the official seal of approval.

No-Flatz, placed in tubes, quickly and easily makes tires puncture-proof. It instantly fills up and permanently seals leaks and holes made by tacks, wire, nails, and other pointed objects that would otherwise cause flat tires. This compound is harmless to tires, tubes, and/or clothing, and is not affected by extreme heat or cold. Lasts indefinitely. Increases the life of tires and tubes by maintaining even pressure and reducing heat from friction.

Tested and approved by  
The Automotive Test Laboratory of America

PAR. 4. In truth and in fact an application of the product Kar-Nu to the finish of an old automobile will not create a finish equal to the finish of a new automobile; the finish produced by the use of the product Kar-Nu is not equal to that of a repaint job ranging in cost from \$25 to \$75, because Kar-Nu, being a transparent liquid, will not replace paint color where paint has been worn or knocked off the surface so treated; the product is not a new, sensational, or "miracle" discovery, as there are a number of products on the market of similar composition for similar use; the application of such products to an automobile will not cause sun fade or other discolorations to disappear. Kar-Nu is a colorless liquid to be used on any color car, and cannot add color where color has disappeared.

In truth and in fact the product No-Flatz is not a sensational, amazing, new discovery; its use will not, and does not, render a tube absolutely puncture-proof, thereby ending flat tires forever; No-Flatz does not fix punctures in tubes instantly and permanently without patching, and the use of the product No-Flatz will not cause a hole made by a nail or other sharp object to become and remain completely and permanently sealed.

The so-called certificates of merit above mentioned and set forth furnished and signed by the Automotive Test Laboratory of America did not and do not reflect the results of recognized scientific tests of the products named therein, because the Automotive Test Laboratory of America is not equipped with any machinery or scientific instruments that could be used for making tests on these or other materials. The Automotive Test Laboratory of America maintains no staff of experts or chemists who conducted any experiments to determine the quality of these products. Its so-called certificates, as above set forth,

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## Order

were and are false and fraudulent, and the use thereof by the respondent had the tendency and capacity to mislead and deceive the purchasing public into the belief that each of said certificates was the result of honest experimentation on the product mentioned therein.

PAR. 5. The acts and practices of the respondent hereinbefore set out have had and now have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true; and to cause, as a result of said erroneous and mistaken belief, a number of the purchasing public to purchase respondent's said products, thereby unfairly diverting trade in interstate commerce to the respondent from its competitors.

## CONCLUSION

The aforesaid acts and practices of the respondent, The Perfect Manufacturing Co., Inc., are to the prejudice and injury of the public, and of respondent's competitors and 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, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent findings as to the facts and conclusion based thereon, and an order disposing of the proceedings; and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, The Perfect Manufacturing Co., Inc., a corporation, trading under the firm name and style Kar-Nu Co. and No-Flatz Co., or any other name, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of its preparations now known as and sold under the names Kar-Nu and No-Flatz, whether sold under these names or any other names, in interstate commerce, and in the District of Columbia, do forthwith cease and desist from representing:

1. That an application of Kar-Nu will finish autos like new.
2. That an application of Kar-Nu will give a result equal in beauty to a repaint job costing from \$25 to \$75.

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3. That there is nothing in the world just like Kar-Nu.
4. That Kar-Nu is a "miracle" discovery and an application thereof to the finish of an automobile will cause discoloration and sun fade to disappear instantly.
5. That No-Flatz is an amazing, new discovery.
6. That No-Flatz renders tires absolutely puncture-proof, ending flat tires forever.
7. That the use of No-Flatz in an inner tube fixes punctures instantly and permanently without patching.
8. That when No-Flatz is used in an inner tube, a hole, resulting from puncture of said inner tube by a nail or other sharp object, will remain completely and permanently sealed.
9. That said preparations have been tested and approved by the Automotive Test Laboratory of America or any other purported testing laboratory, unless such preparations have in fact been scientifically tested in a properly equipped laboratory, under the direction and supervision of qualified technicians, and such approval is based on the result of such actual tests.

*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.

## Syllabus

## IN THE MATTER OF

HYMAN KADETSKY, TRADING AS ACME MERCHANDISE  
COMPANY, AND LIQUIDATION MERCHANDISE COM-  
PANY

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

*Docket 3442. Complaint, May 24, 1938—Decision, Aug. 31, 1938*

Where an individual engaged in the sale of new and secondhand clothing and other merchandise to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such merchandise in commerce among the various States and in aforesaid District, and including many who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their products and the nature of their business and business methods; in advertising his said goods in newspapers, periodicals, pamphlets, testimonials, letters, and catalogs circulated among the various States and in said District—

- (a) Represented that he filled orders promptly and shipped kinds of merchandise described in his catalog, and that single garments might be obtained from him in all sizes, colors, and styles, and that he led all other merchants in values and his customers got best merchandise on the market;
- (b) Represented that his new merchandise was of the latest style, and that his slightly used goods were always cleaned, pressed, and repaired before shipment, and that his experts carefully selected assorted quality merchandise, and that he would replace any merchandise that was not satisfactory, and that his customers were assured of satisfaction; and
- (c) Represented that he was able to purchase large bankrupt stocks, close-out stocks, auction stocks, and manufacturers' samples direct from the source of supply, and thereby sell at low price, and invited prospective salesmen, solicited as aforesaid, to "Stop Working For Others" and "Get into this big pay business that is better right now than ever before," and represented that an agent could make 500 percent profit by reselling his merchandise;

Facts being aforesaid representations were grossly exaggerated, deceptive, false, and misleading, stock dealt in by him as aforesaid was bought on the open market from wholesale clothing merchants and junk dealers, and substantial amount thereof was old, out of style, shop-worn, dirty, worn out, valueless, and of different quality, age, color, style, and condition from that ordered by customers, shipments to fill orders were frequently made month or more after receipt of purchase price and not promptly nor as described in catalogs, single garments could not be obtained as aforesaid represented nor any new merchandise of latest style, slightly used products were not always cleaned, etc., as above set forth, nor unsatisfactory goods returned, replaced, no such selection was made by experts nor did he have large capital with which to make such purchases as aforesaid described, and sell at low price, nor did he so sell or purchase such stock and samples