

Syllabus

IN THE MATTER OF
AMERICAN OIL COMPANY AND GENERAL FINANCE, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF PARAGRAPHS (A) AND (F) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY THE ROBINSON-PATMAN ACT, APPROVED JUNE 19, 1936

Docket 3843. Complaint, July 7, 1939—Decision, Sept. 9, 1939

Where a corporation engaged in distributing and selling, in commerce, gasoline and other petroleum products in various States and in the District of Columbia, and in delivering such products in said District at gasoline stations therein in tank wagons from its bulk plants in State of Virginia, and in selling its said products in said District to various dealer purchasers, including corporate concern which (1) was engaged in business, among other things, of selling and financing sale of taxicabs and in the leasing and operating of a gasoline station in said District at which it sold gasoline and petroleum products of said corporation at retail to taxicab operators and to general public, and which concern (2) purchased products of such corporation from it under provisions of so-called Commercial Consumer Contracts and agreements of said corporation, by which concession of 1½ cents per gallon from the posted retail tank-wagon price, subject to certain minimum and maximum charge, was on specific condition that all products thus purchased were for buyer's own consumption and not for resale in whole or in part to purchaser's employees or to any other person, firm, or corporation—

Discriminated in price between said concern and other retail gasoline dealers in said District who purchased and dealt in gasoline and petroleum products of said corporation, through sale, at prices substantially lower than those charged by it to other retail dealers, of its said products to such concern, which resold products, thus purchased by it at said price concessions on express and specific condition that they were for purchaser's own consumption only and not for resale, to the public and to its owned and controlled taxicabs; to the injury of other retail gasoline dealers in competition with it who were required to and did pay said corporation and other suppliers full posted retail dealer tank-wagon prices applicable on date and at point of delivery.

With result that effect of such discrimination in price had been and might be substantially to lessen competition in line of commerce in which said concern and other retail gasoline dealers in said District were engaged, and to injure, destroy and prevent competition with said corporation, and with said concern which received benefit of discrimination aforesaid:

Held, That such discrimination in price in sale of the gasoline and petroleum products of said corporation between said concern and other competing retail gasoline dealers in said District, constituted a violation of section 2 (a) of the Clayton Act, as amended by Robinson-Patman Act; and

Where said concern engaged as aforesaid, and subsequent to the execution of the first of said contracts providing for such concessions on the express provision, above set forth, that purchase was for buyer's own consumption and not for resale, and well knowing that prices thus fixed in said various

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contracts, and thereafter paid to said corporation, were lower than those at which said corporation's products had been sold by it during period involved to other retail gasoline dealers in said District, many of which competed with the station or stations operated by said concern in sale of said corporation's products—

Knowingly induced such discrimination in price and knowingly received, during period aforesaid, benefit thereof:

Held, That such knowing inducement and receipt of such price discrimination as aforesaid, constituted violation of section 2 (f) of Clayton Act, as amended.

Mr. F. Hier and Mr. J. W. Carter, Jr. for the Commission.

Mr. Charles Henry Thompson, of Baltimore, Md., for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act—U. S. C. title 15, sec. 13), as amended, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that American Oil Co., a corporation, has violated the provisions of subsection (a) of section 2 of said Clayton Act, as amended, and that General Finance, Inc., has violated the provisions of subsection (f) of section 2 of said Clayton Act, as amended, hereby issues its complaint stating its charges in those respects as follows:

PARAGRAPH 1. Respondent American Oil Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with principal office located in the American Building, Baltimore, Md. Said respondent is engaged chiefly in the business of producing, manufacturing, distributing, and selling gasoline and other petroleum products in various States of the United States and in the District of Columbia. Gasoline manufactured and sold by said respondent is mostly of two grades, namely, a so-called "high-test" gasoline sold under the trade name "Amoco," and a "standard" gasoline sold under the trade name "American" or "Orange American." Gasoline sold and delivered by said respondent to gasoline stations in the District of Columbia is transported into the District of Columbia in tank wagons from said respondent's bulk plants in the State of Virginia and delivered from said tank wagons.

PAR. 2. Respondent General Finance, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with principal office and place of business located at 2221 Fourteenth Street NW., Washington, D. C. Said respondent is engaged in the business, among other things, of

selling and financing the sale of taxicabs, and also leases and operates two gasoline stations, one located at the corner of Fourteenth Street and Florida Avenue NW., Washington, D. C., and another located at the corner of Sixth Street and Rhode Island Avenue NW., Washington, D.C., at which stations it engages in the business of selling "Amoco" and "American" gasoline at retail to taxicab operators and to the public.

PAR. 3. The said gasoline stations operated by respondent General Finance, Inc., as set forth in paragraph 2 hereof, are engaged in competition in the sale of gasoline at retail with numerous other dealers in gasoline in the District of Columbia selling American Oil Co. gasoline, and with gasoline dealers selling the gasoline of other producers.

PAR. 4. On or about July 17, 1936, respondent American Oil Co. entered into a contract for the sale of gasoline with six corporations, four doing business in Washington, D. C., and two in Baltimore, Md., all engaged in the business of organizing, promoting, and serving associations or groups of taxicab operators in those cities. A copy of said contract, marked "Exhibit A" is annexed hereto and made a part hereof.¹ The word "Corporation" in the name "City Cab Corporation, Inc." was inserted in said contract by mutual error of the parties and said name was intended to be and describe City Cab Association, Inc., of Washington, D. C.; and said contract has at all times been so understood and treated by the parties. Said contract provides for the sale of "Amoco" and "American Gas" by tank-wagon delivery in the District of Columbia at a price of $55\frac{3}{8}$ cents per gallon below the current posted retail service-station price for said products, said price being from $15\frac{3}{8}$ cents to $21\frac{1}{8}$ cents lower than the posted tank-wagon prices charged by respondent American Oil Co. for "Amoco" and "American Gas" sold by it to other retail gasoline station operators in the District of Columbia.

PAR. 5. The business policies and activities of all of the taxicab companies named in said contract were at the time of the execution of said contract controlled by respondent General Finance, Inc., or by its officers, Herbert Glassman and Edward C. Ostrow, through stock ownership or voting control and through ownership of the majority of the taxicabs operated under the names of said companies. The gasoline used in taxicabs which are owned by or operated under the names of said companies, is purchased by the operators of such taxicabs, and is not supplied by said companies or by respondent General Finance, Inc., except by sale.

¹ See p. 868.

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PAR. 6. Subsequent to the execution of said contract, and during the years 1937, 1938, and 1939, respondent American Oil Co. has sold and delivered large quantities of "Amoco" and "American" gasoline, pursuant to the terms of sale and at the prices specified in said contract of July 17, 1936, to respondent General Finance, Inc. Such deliveries have averaged more than 100,000 gallons per month during said period, and have been made at the retail gasoline stations operated by General Finance, Inc., at Fourteenth Street and Florida Avenue NW., and Sixth Street and Rhode Island Avenue NW., Washington, D. C., as aforesaid. American Oil Co. has billed said gasoline to General Finance, Inc., and payment for the same has been made by General Finance, Inc. The gasoline so purchased by General Finance, Inc., has been resold by it at retail to taxicab operators and to the public generally. The fact of such resale has at all times been well known to respondent American Oil Co., although the said contract provides that the products purchased thereunder "are for Buyer's own consumption only and not for resale, in whole or in part, to Buyer's employees or any other person."

PAR. 7. By selling its "Amoco" and "American" gasolines to respondent General Finance, Inc., at the prices stated in paragraph 4 hereof, and by contracting to sell its said gasolines in the District of Columbia to City Cab Association, Inc., General Taxicab, Inc., Prudom Cab Co., Inc., and Harlem Taxicab Association, Inc., at said prices, which prices are substantially lower than the prices charged by it for said gasolines, respectively, to other retail dealers in gasoline in the District of Columbia, respondent American Oil Co. has discriminated in price, and is discriminating in price, between respondent General Finance, Inc., City Cab Association, Inc., General Taxicab, Inc., Prudom Cab Co., Inc., and Harlem Taxicab Association, Inc., respectively, and other retail gasoline dealers in the District of Columbia who purchase and deal in said American Oil Co. products. The effect of such discrimination in price has been and may be substantially to lessen competition and tend to create a monopoly in commerce in and with the District of Columbia in the sale and distribution of gasoline, and to injure, destroy, and prevent competition with respondent American Oil Co. and with its said customers receiving the benefit of said discrimination.

PAR. 8. Said contract of July 17, 1936, was executed on behalf of five of the six taxicab companies named as buyers by Herbert Glassman and Edward C. Ostrow, who are president and treasurer, respectively, of respondent General Finance, Inc. Respondent General Finance, Inc., and its said officers, at the time of the execution of said contract and at all times since that date, have well known that the

prices for "Amoco" and "American" gasoline fixed in said contract and thereafter paid by said respondent to American Oil Co. for said gasoline, as hereinbefore set forth, were and are from $1\frac{5}{8}$ cents to $2\frac{1}{8}$ cents lower than the prices at which "Amoco" and "American" gasoline have been sold by American Oil Co. during the same period to other retail gasoline dealers in the District of Columbia, including many such dealers competing in the sale of "Amoco" and "American" gasoline with the stations operated by General Finance, Inc. Said discrimination in price was knowingly induced, and at all times herein mentioned has knowingly been received, by respondent General Finance, Inc. Said discrimination in price, as more fully set forth in the preceding paragraphs hereof, is prohibited by subsection (a) of section 2 of said Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (title 15, Sec. 13), the Federal Trade Commission, on July 7, 1939, issued and served its complaint in this proceeding upon the parties respondent named in the caption hereof, charging respondent American Oil Co. with violating the provisions of paragraph (a) of section 2 of the said act as amended, and charging respondent General Finance, Inc., with violating the provisions of paragraph (f) of section 2 of said act as amended. After the issuance and service of said complaint, answers admitting the material allegations set forth in the complaint to be true were filed on behalf of the respondents, American Oil Co. and General Finance, Inc. Thereafter said respondents filed with the Commission waivers of all subsequent and intervening procedure and any further hearing as to the facts and any notice thereof.

Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the admissions of fact made in said answers filed thereto, and the Commission having duly considered the same and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes the following findings as to the facts and conclusion:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. That the respondent American Oil Co. is a corporation under the laws of the State of Maryland, with its principal office

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located in the American Building, Baltimore, Md., and is engaged in the business of distributing and selling in commerce gasoline and other petroleum products in various States of the United States and in the District of Columbia, said gasoline and petroleum products sold in the District of Columbia being delivered at gasoline stations therein in tank wagons from respondent's bulk plants in the State of Virginia.

PAR. 2. That respondent General Finance, Inc., is a corporation under the laws of the State of Delaware, with its principal office and place of business at 2221 Fourteenth Street NW., Washington, D. C., and is engaged in the business, among other things, of selling and financing the sale of taxicabs, and the leasing and operating of a gasoline station located at the corner of Fourteenth Street and Florida Avenue NW., Washington, D. C., at which station it sells gasoline and petroleum products of the respondent American Oil Co. at retail to taxicab operators and to the general public. That respondent General Finance, Inc., operated for a period of 3 weeks, from August 25 to September 16, 1938, an additional gasoline station at the corner of Sixth Street and Rhode Island Avenue NW., Washington, D. C., but that since September 16, 1938, said respondent General Finance, Inc., has not operated said station.

PAR. 3. That respondent General Finance, Inc., as operator of the said gasoline station at Fourteenth Street and Florida Avenue NW., Washington, D. C., in the sale of gasoline and petroleum products at retail, is in competition with numerous other station operators and retail dealers in gasoline and petroleum products in the District of Columbia selling the gasoline and petroleum products of the respondent American Oil Co., and also in competition with station operators and retail dealers selling the gasoline and petroleum products of other suppliers.

PAR. 4. That on or about July 17, 1936, respondent American Oil Co. entered into a contract with six corporations, to wit: General Taxicab, Inc., and Sun Cab Co., Inc., doing business in Baltimore, Md.; and City Cab Association, Inc., General Taxicab, Inc., Prudom Cab Co., Inc., and Harlem Taxicab Association, Inc., doing business in Washington, D. C., for the sale of gasoline. All of these corporations were and are engaged in the business of organizing, promoting, and servicing associations or groups of taxicab operators in Baltimore and Washington. Said contract provided for the sale of gasoline by the respondent American Oil Co. to said six corporations at a price of $15\frac{3}{4}$ cents per gallon less than the posted retail tank-wagon price per gallon charged by respondent American Oil Co., to undivided dealer accounts, on the date of delivery, subject,

however, to a minimum of $8\frac{1}{2}$ cents per gallon and a maximum of 11 cents per gallon. Said contract was designated by respondent American Oil Co. as a Commercial Consumer Contract, and provided specifically that all products purchased thereunder were for the purchaser's own consumption and not for resale in whole or in part to the purchaser's employees or any other person, firm, or corporation.

PAR. 5. That subsequent to the execution of said contract, and during the year 1937 and part of the year 1938, respondent American Oil Co. sold and delivered in its tank wagons from its bulk plant in the State of Virginia large quantities of its gasoline and petroleum products pursuant to the terms of sale and at the prices specified in said contract. Deliveries were made to the said gasoline station operated by respondent General Finance, Inc., at Fourteenth Street and Florida Avenue NW., said deliveries averaging more than 100,000 gallons per month and payment therefor being made by the respondent General Finance, Inc., directly to the respondent American Oil Co. On or about July 1, 1938, respondent American Oil Co. having previously ascertained that said deliveries hereinabove referred to had in fact been paid for by the respondent General Finance, Inc., entered into a contract with respondent General Finance, Inc., for the sale of its gasoline and petroleum products, which contract contained the same terms of sale, prices, and conditions as said contract of July 17, 1936, hereinabove referred to in paragraph 4 hereof. Thereafter, respondent American Oil Co. sold and delivered large quantities of its gasoline and petroleum products to respondent General Finance, Inc., at said gasoline station at Fourteenth Street and Florida Avenue NW., under and pursuant to the terms of sale and at the prices specified in the said contract of July 1, 1938. It also sold and delivered 19,000 gallons of its gasoline and petroleum products under said contract of July 1, 1938, from August 25, 1938, to September 16, 1938, to a gasoline station located at Sixth and Rhode Island Avenue NW., Washington, D. C., operated by the respondent General Finance, Inc., but respondent American Oil Co. discontinued sale and deliveries to said station at Sixth Street and Rhode Island Avenue NW., on and after September 16, 1938.

PAR. 6. That the gasoline and petroleum products so purchased by respondent General Finance, Inc., since April 1, 1937, were resold by it at retail to taxicab operators and to the public generally at said gasoline station at Fourteenth Street and Florida Avenue NW., Washington, D. C., and also from August 25, 1938, to September 16, 1938, at said additional gasoline station located at Sixth Street and Rhode Island Avenue NW., Washington, D. C., and the fact of such resale became known to respondent American Oil Co., in August

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1938. Whereupon respondent American Oil Co., required respondent General Finance, Inc., to execute a dealer contract for the purchase of all gasoline to be resold by said respondent General Finance, Inc., to the general public, which said dealer contract was executed by respondent General Finance, Inc., and respondent American Oil Co. on September 1, 1938, the terms of which require respondent General Finance, Inc., to pay respondent American Oil Co. for all gasoline thereafter purchased at its regular undivided dealer tank-wagon prices for the particular products purchased, applicable on date of delivery. Thereafter, on September 8, 1938, said respondents American Oil Co. and General Finance, Inc., entered into an agreement supplemental to said contract of September 1, 1938, which said supplemental agreement provided that respondent General Finance, Inc., should pay for all gasoline purchased for resale at the current undivided dealer tank-wagon prices of respondent American Oil Co. prevailing in Washington, D. C., on date of delivery, and should pay for all purchases made for consumption in the taxicabs of said associations and its controlled taxicabs in Washington, D. C., at the prices and upon the terms and conditions of said Commercial Consumer Contracts of July 17, 1936, and July 1, 1938, and further provided that respondent American Oil Co. would bill respondent General Finance, Inc., for all purchases thereafter made at the regular undivided dealer tank-wagon prices for the particular products purchased, applicable on date of delivery, but at the end of each month would credit respondent General Finance, Inc., with the contract price differential between said regular undivided dealer tank-wagon price and said price fixed in the contracts of July 17, 1936, and July 1, 1938, upon the gallonage reported by respondent General Finance, Inc., to respondent American Oil Co. as having been supplied by said respondent General Finance, Inc., to taxicabs owned and/or controlled by it. Since September 8, 1938, respondent General Finance, Inc., has furnished to respondent American Oil Co. monthly statements showing gallonage supplied the said taxicabs and gallonage resold to the public generally, for which the full, regular, undivided dealer tank-wagon price has been collected. At the end of each month respondent American Oil Co. has credited the account of respondent General Finance, Inc., with the contract price differential upon the gallonage reported by respondent, General Finance, Inc., as supplied to taxicabs owned and/or controlled by it. Respondent, General Finance, Inc., admits in its substitute answer that the gasoline so purchased by it under said contract of September 1, 1938, and supplemental agreement of September 8,

1938, has been and is now being resold to the public and to its owned and/or controlled taxicabs.

PAR. 7. That respondent American Oil Co., by selling its gasoline and petroleum products to respondent General Finance, Inc., at prices which were substantially lower than the prices charged by it for said gasoline and petroleum products to other retail dealers in said products in the District of Columbia, has discriminated in price between respondent General Finance, Inc., and other retail gasoline dealers in the District of Columbia who purchase and deal in the gasoline and petroleum products of respondent American Oil Co., and the effect of such discrimination in price has been, and may be substantially to lessen competition in the line of commerce in which said respondent General Finance, Inc., and other retail gasoline dealers in the District of Columbia were engaged; to injure, destroy, and prevent competition with respondent American Oil Co. and with respondent General Finance, Inc., which received the benefit of such discrimination.

PAR. 8. That the prices fixed and agreed upon in said contracts of July 17, 1936, and July 1, 1938, were based on, and wholly contingent upon, the express and specific condition in said contracts that gasoline and petroleum products purchased thereunder were for the purchaser's own consumption only and not for resale by it; and that respondent General Finance, Inc., by reselling said gasoline and petroleum products so purchased under said contracts of July 17, 1936, July 1, 1938, and September 1, 1938, thus obtained from respondent American Oil Co. an unlawful price discrimination in its favor and to its benefit and to the injury of other retail gasoline dealers in competition with it who were required to and did pay respondent American Oil Co. and other suppliers the full posted retail dealer tank-wagon prices applicable on date of delivery at point of delivery.

PAR. 9. That respondent General Finance, Inc., subsequent to the execution of said contract of July 17, 1936, has well known that the prices for gasoline and petroleum products fixed in said contracts and subsequent contracts and thereafter paid to said respondent American Oil Co., were lower than the prices at which said gasoline and petroleum products of respondent American Oil Co. had been sold by it during the same period to other retail gasoline dealers in the District of Columbia, many of which such dealers competed with the station or stations operated by the respondent General Finance, Inc., in the sale of said gasoline and petroleum products of respondent American Oil Co., and said discrimination in price was knowingly

induced, and has knowingly been received, by said respondent General Finance, Inc., during the period aforesaid.

CONCLUSION

The Commission concludes that the respondent, American Oil Co., has discriminated in price in the sale of its gasoline and petroleum products between respondent General Finance, Inc., and other competing retail gasoline dealers in the District of Columbia, and that the effect of such discrimination may be substantially to lessen competition in the line of commerce in which said respondent General Finance, Inc., and other retail gasoline dealers in the District of Columbia are engaged, and to injure, destroy, or prevent competition with said respondents, in violation of paragraph (a) of section 2 of the said Clayton Act, as amended by the Robinson-Patman Act.

The Commission further concludes that the respondent General Finance, Inc., knowingly induced and received, during the period aforesaid, the benefit of said price discrimination in violation of paragraph (f) of section 2 of said Clayton Act, as amended by the Robinson-Patman 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 filed thereto by the respondents, American Oil Co. and General Finance, Inc., admitting the material allegations of fact in the complaint to be true, and waiving all intervening procedure and further hearing as to the said facts, and the Commission having made its findings as to facts and its conclusions, which findings and conclusions are hereby made a part hereof, that said respondents have violated the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended by the Robinson-Patman Act approved June 19, 1936 (title 15, sec. 13).

It is ordered, That respondent American Oil Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale and distribution, and delivery of its gasoline and petroleum products in interstate commerce and in the District of Columbia, do forthwith cease and desist (a) from the price discriminations found in paragraphs 7 and 8 of the aforesaid findings as to the facts and conclusion; and (b) from in any other manner, directly or indirectly, discriminating in price between respondent, General Finance, Inc., and other purchasers competi-

tively engaged with respondent General Finance, Inc., in the resale of its products of like grade and quality where the effect may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which said respondent, or any of its customers, are engaged, or to injure, destroy, or prevent competition with respondent or its customers, except where such price differences make only due allowance for differences in the cost of sale or delivery resulting from differing methods or quantities in which said gasoline or petroleum products are to such purchasers sold or delivered.

It is further ordered, That the respondent General Finance, Inc., its officers, directors, representatives, agents, and employees do forthwith cease and desist, (a) from inducing or receiving the price discriminations found in paragraphs 7, 8, and 9 of the aforesaid findings as to the facts and conclusion; and (b) from in any other manner knowingly purchasing gasoline and petroleum products at prices which discriminate between it and other purchasers of such products of like grade and quality where the effect may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which said respondent is engaged, or to injure, destroy, or prevent competition with respondent or its customers except where such price differences make only due allowance for differences in the cost of sale or delivery resulting from differing methods or quantities in which said gasoline or petroleum products are to it or such other purchasers sold or delivered.

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

EXHIBIT A ¹

AMERICAN AMOCO GAS

CONTRACT OF SALE made this 17th day of July 1936, between THE AMERICAN OIL COMPANY, a Maryland corporation, hereinafter called "AMERICAN" and City Cab Corp., Inc., of Washington, D. C., General Taxicab, Inc., Washington, D. C., Prudom Cab Co., Inc., Washington, D. C., Harlem Taxicab Assn. Inc., Washington, D. C., General Taxicab Inc., Baltimore, Md. and Sun Cab Company, Inc., Baltimore, Md., hereinafter called "BUYER."

1. Sale; Products. AMERICAN agrees to sell and deliver to BUYER and BUYER agrees to purchase from AMERICAN, during the continuance of this agreement, all gasoline and motor fuel that BUYER shall require for use in automobiles and other motor vehicles owned and/or operated by BUYER, the gasoline and motor fuel to be delivered and the quantities thereof to be taken out hereunder by BUYER to be as follows:

Brands	Minimum quantity per year	Maximum quantity per year
Amoco.....	Gallons 200,000	Gallons 400,000
American gas.....	1,800,000	2,600,000

All products purchased hereunder are for BUYER's own consumption only and not for resale, in whole or in part, to BUYER's employees or any other person, firm, or corporation.

2. Price. On all deliveries of gasoline and/or motor fuel hereunder BUYER agrees to pay AMERICAN in accordance with the attached schedule of prices (plus all taxes as hereinafter provided) applicable for the particular product delivered, at the time of delivery, in the territory in which delivery is made, said schedule being a part hereof as fully as if written herein.

3. Delivery. Deliveries of said products shall be made in approximately equal monthly quantities with reasonable promptness, by tank wagon into storage facilities to be provided by BUYER at Baltimore, Md. and Washington, D. C., but AMERICAN shall not be liable for any delay or failure to deliver due to fire, accidents, strikes, riots, interruptions or delay in transportation or any other condition beyond the control of AMERICAN.

4. Terms of Payment. Payment for all deliveries hereunder shall be for cash or upon such terms as AMERICAN's Credit Manager shall from time to time require.

¹ To complaint. See p. 859, supra.

5. Taxes, etc. BUYER agrees to assume and pay to AMERICAN all taxes, duties and other charges with respect to the manufacture, sale, delivery, or use of said products, which AMERICAN may be required to pay or collect under any municipal, State or federal law now in effect or hereafter enacted. All such taxes, duties and other charges shall be paid by BUYER to AMERICAN at the time of payment for products supplied hereunder and shall be added to invoices therefor.

6. Duration of Contract. This contract shall continue in effect for a period of three years beginning August 1st, 1936, and thereafter from year to year upon the same terms and conditions, subject, however, to termination by either party at the expiration of the original term hereof or any subsequent yearly period upon thirty (30) days' prior written notice from either to the other.

7. Entirety of Contract. This contract supersedes and cancels all agreements between the parties in respect of the purchase by BUYER and sale by AMERICAN of products covered hereby for delivery at the point(s) of delivery herein stated and without prejudice to accrued rights of either party under said superseded agreements. No prior stipulation, agreement or understanding of the parties or their agents in respect to subject matter of this contract shall be valid or enforceable unless embodied in this contract or covered by these provisions.

8. AMERICAN shall have the right to terminate this contract at any time after *August 1st, 1937*, on sixty (60) days' written notice to BUYER of its intention so to do.

9. This contract is executed in triplicate by both parties and shall be binding upon AMERICAN only when approved by its President or one of its Vice-Presidents or its General Sales Manager.

As witness the following signatures:

THE AMERICAN OIL COMPANY,

Witness: By: (s) JAS. S. CARNEY, *General Sales Manager.*

(s) C. H. THOMPSON.

GENERAL TAXICAB, INC. (Baltimore, Md.),

Attest: (s) HERBERT GLASSMAN, *President.*

(s) EDWARD C. OSTROW, *Secretary.*

SUN CAB COMPANY, INC. (Baltimore, Md.),

Attest: (s) HERBERT GLASSMAN, *President.*

(s) EDWARD C. OSTROW, *Secretary.*

CITY CAB CORPORATION, INC. (Washington, D. C.),

Attest: (s) HERBERT GLASSMAN, *President.*

(s) EDWARD C. OSTROW, *Secretary.*

GENERAL TAXICAB, INC. (Washington, D. C.),

Attest: (s) HERBERT GLASSMAN, *President.*

(s) EDWARD C. OSTROW, *Secretary.*

PRUDOM CAB COMPANY, INC. (Washington, D. C.),

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Attest: (s) EDWARD C. OSTROW, *Vice-President.*

(s) HERBERT GLASSMAN, *Secretary.*

HARLEM TAXICAB ASSN., INC. (Washington, D. C.),

Attest: (s) R. L. GLOVER, *President.*

(s) ———, *Secretary.*

(RIDER ATTACHED TO AND MADE A PART OF COMMERCIAL CONSUMER CONTRACT, FORM CC-1, DATED _____ BETWEEN THE AMERICAN OIL COMPANY AND CITY CAB CORPORATION, INC., GENERAL TAXICAB, INC., PRUDOM CAB CO., INC., HARLEM TAXICAB ASSN., INC., GENERAL TAXICAB INC., AND SUN CAB COMPANY, INC.)

The prices payable by BUYER for gasoline and/or motor fuel under the annexed contract shall be as follows:

AMERICAN GAS at AMERICAN's full posted retail tank wagon price per gallon to "UNDIVIDED DEALER ACCOUNTS" at point of delivery on date of delivery, less a contract differential of One and five-eighths cents ($1\frac{5}{8}\text{¢}$) per gallon, subject, however, to a minimum of Five and one-half cents ($5\frac{1}{2}\text{¢}$) per gallon and a maximum of Eight cents (8¢) per gallon net to AMERICAN.

AMOCO-GAS at AMERICAN's full posted retail tank wagon price per gallon to "UNDIVIDED DEALER ACCOUNTS" at point of delivery on date of delivery, less a contract differential of One and five-eighths cents ($1\frac{5}{8}\text{¢}$) per gallon, subject, however, to a minimum of Eight and one-half cents ($8\frac{1}{2}\text{¢}$) per gallon and a maximum of Eleven cents (11¢) per gallon net to AMERICAN.

For the purposes of correct construction of the price clause of this agreement, a dealer who actually handles and sells the petroleum products of AMERICAN only is classified as an "UNDIVIDED DEALER ACCOUNT." All other dealers are classified as "DIVIDED DEALER ACCOUNTS."

The foregoing price structure is intended to establish a price per gallon for gasoline and motor fuel purchased by BUYER from AMERICAN at five and five-eighths cents ($5\frac{5}{8}\text{¢}$) per gallon below the full posted retail service station price (including all taxes and without any discounts or allowances therefrom) of the Lord Baltimore Filling Stations, if any, on date of delivery in the particular city (Baltimore or Washington as the case may be) for the particular products supplied, subject, nevertheless, to the minimum net prices to AMERICAN, exclusive of all taxes, as above set forth.

Syllabus

IN THE MATTER OF

HARRY S. BENHAM, TRADING AS AMERICA'S MEDICINE
AND NU-MODE COMPANY

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

Docket 3851. Complaint, July 15, 1939—Decision, Sept. 9, 1939

Where an individual engaged in sale and distribution of various medicinal preparations, in commerce among the various States and in the District of Columbia, including certain medicinal preparations for the relief of delayed menstruation, designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound"; in advertisements which he disseminated through the mails through insertions in newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States and in other ways, and which were intended and likely to induce purchase of said various preparations—

- (a) Represented that said products, thus variously designated as "America's Medicine XX Compound," "Nu-Mode XX Compound," or "Kotess Periodic Relief Compound," "America's Medicine XXX Compound," and "Nu-Mode XXX Compound," or "Kotess Periodic Relief Compound," were a competent and effective remedy for delayed menstruation, and were harmless and would accomplish results without pain or inconvenience, facts being they were not a competent and effective remedy for said condition and would not accomplish such results as above set forth, and were not safe and harmless in that said "XX Compound" contained aloes and oil of savin, and said "XXX Compound" contained extract of cotton root bark, ergotin and oil of savin in quantities sufficient to cause serious and irreparable injury to health if taken under conditions prescribed in said advertisements or under such conditions as are customary or usual; and
- (b) Failed to reveal, in advertisements disseminated as aforesaid, that use of said preparations, under conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect, through use of such false, deceptive, and misleading statements and representations, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and of inducing portion of purchasing public, because of such belief, to buy its said injurious, drug-containing preparations:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. R. P. Bellinger for the Commission.

Mr. Edward T. Morris, of Chicago, Ill., for respondent.