

Syllabus

IN THE MATTER OF
KIDDER OIL COMPANY

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

Docket 3026. Complaint, Dec. 30, 1936—Decision, Sept. 19, 1939

Where a corporation engaged in preparation, sale, and distribution of certain packaged lubricant which it designated as "Koatsal," and ingredients of which were lubricating oil and colloidal graphite, and which was recommended for use in fuels and crankcase oils for automobile and aeroplane engines; in advertising its said product through pamphlets, letters, post cards, testimonials, and other advertising matter distributed to members of purchasing public in various States and furnished to customers for such distribution, and through periodicals of general circulation—

- (a) Represented that an individual, whose name it bore, was an original pioneer in the blending of colloidal graphite and lubricating oil and had great scientific knowledge which enabled him to develop said product, facts being many were engaged in selling colloidal graphite and lubricating-oil mixtures similar to such said "Koatsal," long prior to entry into field of lubrication of said individual, who merely compounded said preparation by using well-known formula furnished by corporate seller of product, composed of 10 percent colloidal graphite and 90 percent lubricating oil;
- (b) Represented that said "Koatsal" penetrated and adhered to all metal surfaces which it reached, and that it permeated the pores of the metal and soaked into it, and that metal became plated with it and moving part rode on such plating; and
- (c) Represented, as aforesaid, that said "Koatsal" reduced friction and provided perfect protection against burned-out bearings, and made metal self-lubricating, and improved operation of a motor, and that automobile lubricated therewith would run further distance without oil in crankcase, without damage to any part, than could automobile lubricated with oil thus run;

Facts being that while oil and graphite were for many years the most generally used lubricants, and valuable ones, applied in proper place, viscosity and other properties and qualities of a film of lubricant are unaffected by presence of colloidal graphite as in said preparation, regardless of whether motor is operated under full-film or boundary conditions, said preparation has same properties as oil contained therein and no more, and effect of said preparation upon metal surfaces of a bearing is same effect as produced by said oil therein contained, and no more, no reduction of friction is accomplished by conditioning motor with said "Koatsal," and such conditioning, granted ample supply of oil, results in no measurable effect on friction, power or economy thereof, and bearing will run without substantial damage for indefinite period after oil is drained from crankcase, provided film of oil is maintained between moving and stationary surfaces, irrespective of whether such bearing was conditioned with "Koatsal" or not, and such a bearing is quickly destroyed, irrespective of whether previously

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conditioned with said preparation, when said film is removed and boundary conditions exist; and

- (d) Represented that its distributors, agents, salesmen, and demonstrators earned large sums of money by purchasing said preparation from it and selling same to public, facts being amounts earned by such salesmen, etc., in said purchase and resale were insignificant;

With tendency and capacity to mislead and deceive substantial portion of purchasing public with regard to value, efficacy, and effect of preparation aforesaid, and with result, as direct consequence of such deceptive acts and representations and such beliefs thus induced, that said public purchased said product and trade was unfairly diverted to it from competitors engaged in distribution and sale of products designed for similar usage, and who truthfully advertise and represent the properties, capacities, and effects of their respective products and results that may be expected to be obtained from purchase or use thereof:

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

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. T. H. Kennedy and *Mr. R. A. McOuat* for the Commission.

Franchot, Runals, Cohen, Taylor & Rickert, of Niagara Falls, N. Y., for respondent.

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 Kidder Oil Co., a corporation, has been, and is, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof will be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Kidder Oil Co., is a corporation organized, existing, and doing business under the laws of the State of Wisconsin, with its principal place of business at 818 South Third Street, La Crosse, Wis. Respondent, for more than 1 year last past, has been engaged in the manufacture for sale and sale of a product sold by it under the trade name of "Koatsal" in commerce between and among the various States of the United States and the District of Columbia.

Respondent causes said product, when sold, to be shipped from its place of business in the State of Wisconsin, or other State of origin of said shipment, to purchasers thereof located in various States of the United States other than the State of Wisconsin or other than

the State of origin of the shipment. Respondent has at all times named herein maintained a constant current of trade and commerce in its said product, "Koatsal," between and among the various States of the United States.

PAR. 2. In the course and conduct of its said business, respondent has been, for more than 1 year last past, and is now engaged in competition with other corporations, individuals, associations, and partnerships engaged in the manufacture for sale, 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. 3. In the course and conduct of its said business, as hereinabove described, respondent, in soliciting the sale of, and in selling its product, "Koatsal," by pamphlets, labels attached to containers of the product, letters, post cards, testimonials, advertisements inserted in newspapers, periodicals, and magazines, and otherwise, has made extravagant, deceptive, misleading, and false statements and representations regarding the value, efficacy, and effect of its said product and the results that are achieved by using it, among which are the following:

(a) That Joseph K. Kidder, respondent's president, has great scientific knowledge which he has brought into play in perfecting "Koatsal," and that he is an original pioneer in this new field of lubrication.

(b) That "Koatsal" performs amazing feats of lubrication never before possible and utterly impossible by any other method, that it perfects lubrication and is more efficient than any other method because it is scientifically correct.

(c) That "Koatsal" reduces vibration in aeroplane motors to a remarkable degree.

(d) That "Koatsal" penetrates and adheres to all metal surfaces it reaches, "actually becomes a part of the metal, permeating the pores * * * literally 'soaking' into it," that the metal becomes plated with it and that moving parts ride on this plating.

(e) That "Koatsal" reduces friction as much as 50%, provides perfect protection against burned out bearings, and makes metal self-lubricating.

(f) That an automobile conditioned with "Koatsal" can run an amazing distance without oil in the crankcase without damage to any part.

(g) That respondent's distributors, agents, salesmen and demonstrators make 230% maximum profit and up to \$35 to \$40 daily.

PAR. 4. In truth and in fact respondent's representations, and each

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of them, as set forth in paragraph 3 hereof, and respondent's advertisements and representations in pamphlets, circulars, labels attached to containers of the product, letters, post cards, testimonials, advertisements inserted in newspapers, periodicals, and magazines, and otherwise, are extravagant, deceptive, misleading, and false in the following respects:

Joseph K. Kidder, respondent's president, does not possess great scientific knowledge and is not an original pioneer in the field of lubrication for which respondent represents its product to be efficacious. "Koatsal" does not perform amazing feats of lubrication never before possible, and utterly impossible by any other method, nor does its use perfect lubrication, nor is the method of its use more efficient than any other method because it is scientifically correct, or for any other reason. The use of "Koatsal" in airplane motors does not reduce vibration in them to a remarkable, or any substantial, degree. "Koatsal" does not penetrate the metal surfaces it reaches, does not become a part of the metal, nor does it soak into the metal. The metal reached by "Koatsal" does not become plated with it, permitting moving parts to ride on this plating. The use of "Koatsal" does not reduce friction as much as 50 percent, nor to any extent approximating that percentage, it does not provide perfect protection against burned-out bearings, nor does it make metal self-lubricating. An automobile conditioned with "Koatsal" cannot run an amazing distance without oil in its crankcase without damage to any part of said automobile. Respondent's distributors, agents, salesmen, and demonstrators do not make 230 percent maximum profit and up to \$35 to \$40 daily, nor do they achieve any comparable rewards.

PAR. 5. Respondent's advertising and representations hereinabove described have had, and still have, the tendency and capacity to mislead and deceive the purchasing public regarding the value, efficacy, and effect of "Koatsal." As a direct consequence of the deceptive acts and representations of the respondent, and the erroneous and mistaken beliefs induced by said acts as herein set-out, the purchasing public has purchased respondent's "Koatsal" with the result that trade has been unfairly diverted to the respondent from competitors engaged in the business of distributing or selling products designed for similar usage who truthfully advertise and represent the properties, capacities, 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 respondent to commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. The acts, practices, and representations of the respondent hereinabove set forth have been, and are, to the injury and prejudice of the public and the competitors of the respondent in interstate commerce, and have constituted, and now constitute, unfair methods of competition 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 the 30th day of December 1936, issued and served its complaint in this proceeding upon the respondent, Kidder Oil Co. charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Thomas H. Kennedy, attorney for the Commission, and in opposition to the allegations of the complaint by Joseph K. Kidder, respondent's president, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, on May 14, 1938, the Commission ordered the case reopened for the taking of further testimony. Accordingly, testimony and other evidence in support of the allegations of the complaint were introduced by R. A. McOuat, attorney for the Commission and in opposition to the allegations of the complaint by E. E. Franchot, attorney for the respondent, and the said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel immediately aforesaid, and the Commission having duly considered the matter 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 conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Kidder Oil Co., is a corporation organized and doing business under the laws of the State of Wisconsin. Its principal place of business is at 818 South Third Street,

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La Crosse, Wis. Respondent is now, and for more than 1 year last past has been, engaged in the business of preparing, selling, and distributing in commerce a certain packaged lubricant designated as "Koatsal." The ingredients of "Koatsal" are lubricating oil and colloidal graphite.

PAR. 2. Respondent causes its product when sold to be transported from its place of business in La Crosse, in the State of Wisconsin, to purchasers thereof located at various points in other States of the United States. Respondent has maintained and does now maintain a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent in the course of its said business is in competition with other corporations and with individuals and firms also engaged in the business of preparing, selling, and distributing lubricants and other products intended and sold for the same purposes for which respondent's product is sold, in commerce between and among various States of the United States.

PAR. 4. In the course and operation of its business and for the purpose of inducing individuals, firms, and corporations to purchase said packaged lubricant, the respondent has made use of pamphlets, labels attached to the containers of its product, letters, post cards, testimonials, and other advertising literature, some of which it distributes to members of the purchasing public located in the various States of the United States, and some of which it furnishes to its customers to be placed by them in the hands of members of the purchasing public. It has also made use of advertisements inserted in magazines having a general circulation throughout the various States of the United States. In all said advertising matter respondent has caused its corporate name to be prominently and conspicuously displayed in connection with the trade name of its product, "Koatsal," together with the following statements:

Joseph K. Kidder, a pioneer in this field of improved lubrication, has brought into play his great scientific knowledge and years of experience and research and offers a Vastly Superior and Perfected product called Koatsal. Koatsal performs amazing feats of lubrication that were never before possible.

Koatsal is Friction's Greatest Foe.

The vibration is reduced in Koatsal conditioned aeroplane motors to a remarkable degree.

The heat and pressure exerted inside the motor make Koatsal penetrate and adhere to all metal surfaces it reaches. It actually becomes a part of the metal, permeating the pores . . . literally "soaking" into it. The metal really becomes "plated" with a satin-like heat-resisting film of great durability and marvelous lubricating efficiency.

The moving surfaces of the motor are actually kept apart from each other. They don't touch but "ride" on a durable surface, or plating of this super-lubricant. As a result friction is reduced as much as 50%.

* * * Bearings are protected from overheating.

Koatsal provides perfect protection against burned out bearings.

Now Auto Engines Run Without Oil.

Imagine an automobile * * * without a drop of oil in the crank case * * * running at normal speeds for 25 miles and even far greater distances * * * with absolutely no injury to Bearings, Piston Pins, Rings, Cylinder Walls or other parts! Don't say "Impossible!" It Can be done * * * it has been done. It has been repeatedly demonstrated that motors conditioned with this type of lubrication can actually operate without any injury to bearings or frictional parts for unbelievable lengths of time, even after all oil has been drained.

Through the use of said statements and other statements of similar import and meaning used in its advertising, respondent represents directly or by implication that Joseph K. Kidder has great scientific knowledge which he employed in developing "Koatsal," and that he is an original pioneer in blending colloidal graphite with oil; that "Koatsal" perfects lubrication and performs amazing feats of lubrication never before possible, and impossible by any other method; that "Koatsal" reduces vibration in airplane and automobile motors to a remarkable degree; that "Koatsal" penetrates and adheres to all metal surfaces that it reaches, penetrates and soaks into the pores of the metal, plates the metal surfaces, and that moving parts ride on this plating; that "Koatsal" reduces friction, provides perfect protection against burned-out bearings, and makes metal self-lubricating and improves the operation of a motor; that an automobile lubricated with "Koatsal" can run a further distance without oil in the crankcase without damage to any part than an automobile lubricated with oil can run without oil in the crankcase; that respondent's distributors, agents, salesmen, and demonstrators, earn large sums of money by purchasing "Koatsal" from the respondent and selling it to the public.

PAR. 5. In truth and in fact many other persons were engaged in selling colloidal graphite and lubricating oil mixtures similar to "Koatsal" long prior to Joseph K. Kidder's entry into this field of lubrication. He merely compounded "Koatsal" by using a well-known formula furnished by Acheson Colloids Corporation. Respondent's product, "Koatsal," is a solution of oil and colloidal graphite, recommended by respondent for use in fuels and crankcase oils for automobile and airplane engines. The graphite used in respondent's product is manufactured by Acheson Colloids Corporation of Port Huron, Michigan, which sells to respondent a product called

concentrated "Oildag," which is 10 percent colloidal graphite and 90 percent lubricating oil. Respondent blends one part of concentrated "Oildag" with fifty parts of lubricating oil to make "Koatsal." Acheson Colloids Corporation formerly made a product called "Ready for Use Oildag," which contained 1 part of concentrated "Oildag" to 50 parts of lubricating oil. "Ready for Use Oildag" so prepared by Acheson Colloids Corporation for sale to the public before 1930 was substantially the same product as "Koatsal," first introduced by Joseph K. Kidder in 1935.

"Koatsal" is prepared by the respondent and sold under two different labels. Type "U" "Koatsal" is intended for upper cylinder lubrication. Respondent recommends one ounce of Type "U" "Koatsal" for addition to five gallons of gasoline in the fuel tank. Type "C" "Koatsal" is intended for use in the crankcase and respondent recommends that two ounces of Type "C" "Koatsal" be mixed with each quart of oil in the crankcase. In either case, for quicker results, respondent recommends that the dosage be increased. Respondent claims that the effects and benefits to lubrication of a motor which it asserts come from the use of its product, are due solely to the presence of colloidal graphite which is blended with the oil to form "Koatsal."

For many years oil and graphite have been the most generally used lubricants. Each is a valuable lubricant when applied in the proper place. Oil alone has been the popular lubricant for airplane and automobile engines and does result in reducing friction.

The primary function of any lubricant in airplane and automobile motors is to reduce friction. Friction is waste work and is reduced by the forming of a film of lubricant between the stationary and moving parts of a bearing, holding them apart. There is practically no contact of metal to metal when a full film of lubricant is maintained between the moving and stationary surfaces. However, within this lubricating film particles next to the moving surface are in motion and those next to the stationary surface are stationary so that there must be a constant shearing of the film, which action transforms work into heat. Twice in each revolution, each piston pauses momentarily as it reverses direction. During the pause the tension in the rings tends to force out any lubricant between rings and the cylinder walls. In any automobile or airplane motor, even when running under full film conditions, there is a momentary shearing of the film.

When an automobile is given a fresh charge of lubrication, the film is as full as it is possible to maintain between the metal surfaces. This is called full film lubrication. As the lubricant is consumed and only a thin film exists, boundary conditions are approached. Boundary condition is that stage of lubrication when the film is negligible.

Respondent asserts that under full-film conditions its product is of no benefit to lubrication. On the other hand, respondent claims that when boundary condition is approached, its product has a definite beneficial effect.

Boundary conditions are often brought about by lowering of the viscosity of the lubricant, the introduction of grit between the surfaces and the fluctuating temperatures under the wide range of speed and load of a motor. There are many other factors which cause boundary conditions. Viscosity is lowered by the introduction of gas into the oil and other causes. Grit causes the metal surfaces to strike each other and the grit. The extremes of temperature change the size and shape of the bearing surfaces.

The Commission finds that the viscosity and other properties and qualities of a film of lubricant are unaffected by the presence of the colloidal graphite in "Koatsal" whether a motor is operated under full-film or boundary conditions. "Koatsal" has the same qualities, properties, and characteristics as the oil therein contained has and no more. Its effect upon the metal surfaces of a bearing is the same effect as is produced by the oil therein contained and no more.

In tests made on bearings with plain oil and also with graphite oil, it has been determined that in the presence of an ample supply of oil, "Koatsal" has no measurable effect on the friction, power, or economy of a gasoline engine. No reduction of friction is accomplished by conditioning a motor with "Koatsal."

Tests were also made by running automobiles and bearings to destruction and comparisons made as to the effect of "Koatsal" on durability of parts. It is determined from these tests that a bearing will run without substantial damage for an indefinite period after oil is drained from the crankcase so long as a film of oil is maintained between the moving and stationary surfaces of metal, whether the bearing has been conditioned with "Koatsal" or not. It is also determined from tests that as soon as the film of oil is removed and boundary conditions exist that a bearing is quickly destroyed, whether previously conditioned with "Koatsal" or not.

Salesmen, distributors, and demonstrators of respondent's products have earned insignificant amounts in purchasing "Koatsal" from respondent and reselling it to the public.

PAR. 6. Respondent's advertising and representations hereinabove described have had and still have the tendency and capacity to mislead and deceive the purchasing public regarding the value, efficacy and effect of "Koatsal." As a direct consequence of the deceptive acts and representations of the respondent and the erroneous and mistaken beliefs induced by said acts, the purchasing public has pur-

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chased respondent's product with the result that trade has been unfairly diverted to the respondent from competitors engaged in the business of distributing or selling products designed for similar usage, who truthfully advertise and represent the properties, qualities, capacities, and effects of their respective products and the results that may be expected to be obtained from the purchase or use thereof.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, 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.

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, testimony, and other evidence taken before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by R. A. McQuat, counsel for the Commission, and E. E. Franchot, counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Kidder Oil Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its product "Koatsal" whether sold under that name or under any other name in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That Joseph K. Kidder is an original pioneer in the blending of colloidal graphite and lubricating oil and that he has great scientific knowledge which enabled him to develop Koatsal.

2. That Koatsal penetrates and adheres to all metal surfaces it reaches, permeates the pores of the metal, soaks into the metal, and that the metal becomes plated with Koatsal and moving parts ride on this plating.

3. That an automobile conditioned with Koatsal will run any greater distance without oil in the crankcase without damage to any part than will an automobile conditioned with ordinary lubricating oil of the same quality used in Koatsal.

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4. That the lubricating qualities of Koatsal are any greater than the lubricating qualities of the oil which it contains.

5. That the usual and customary earnings or profit to be derived from the sale of its product by distributors, salesmen and demonstrators are larger than and in excess of the usual and customary amounts actually so earned under normal conditions in the due course of business.

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

IN THE MATTER OF
PEANUT SPECIALTY COMPANY

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

Docket 2273. Complaint, June 22, 1939¹—Decision, Sept. 23, 1939

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and which included (1) box of large number of malted milk balls, together with four-section push card, for sale and distribution of said milk balls under a plan and in accordance with said card's explanatory legend by which customer received for penny paid from said "Basketball" assortment 1, 2, 3, 5, 10, or 20 pieces in accordance with legend secured by chance through disk of card selected for push, and last sale in first three sections entitled purchasers to 5 pieces, and last sale on card entitled purchaser to 15 pieces, and (2) number of penny pieces of chocolate covered candy of uniform size, shape, and quality, together with a number of larger pieces to be given as prizes to those purchasers of such uniform pieces who secured by chance one of a relatively few pieces thereof, the enclosed colored centers of which differed from majority, and together with explanatory display card for retailers' use, and (3) various other assortments of which the two above described were illustrative—

Sold to wholesalers, jobbers, and retailers for display and resale by retailer purchasers thereof in accordance with the aforesaid sales plans such assortments, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with sales plans above described, involving game of chance or sale of a chance to procure additional pieces of candy without additional cost, or larger pieces of candy or packages of candy, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by sales plans or methods employed by it in sale and distribution of its candy and element of chance involved therein and were thereby induced to buy and sell its said product in preference to that of competitors who do not use such or equivalent methods, and with effect, through use of such method by it and by reason of said game of chance, of unfairly diverting trade to it from its competitors aforesaid who do not use such or equivalent method, to the substantial injury of competition in commerce:

¹ Amended and supplemental.