

IN THE MATTER OF
UNITED FACTORIES, INC.

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

Docket 3797, Complaint, May 31, 1939—Decision, June 10, 1940

Where a corporation engaged in sale and distribution of its so-called automotive engine reconditioner or "Micaseal" to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of preparations designed for similar uses in commerce among the various States and in said District; in advertisements of its said product in newspapers, periodicals, circulars, and other printed matter circulated and distributed among prospective purchasers in various States and in said District, and in continuities broadcast from radio stations of extra-State audience—

- (a) Represented, directly and by implication, that use of its said preparation would effect substantial economies in operation of an automobile through lessening gasoline and oil consumption, and that, put into the motor through the spark plug openings, it filled scores and scratches on cylinder walls and formed a cushion seal which increased compression, checked excessive carbon formation, added speed, power, and smoothness to operation of old motors, and, in fact, reconditioned a motor at a saving of 95 percent over ordinary mechanical methods of reboring cylinders and refitting pistons therein, facts being preparation in question was not essentially different in chemical composition from various other substances or products or preparations or "engine improvers," scientific principle of which was based on action of vermiculite in the expanded or unexpanded form, and in all of which, claims for products were based upon action of expended vermiculite as in said "Micaseal," and said product would not effect substantial economies or accomplish other results above claimed for it, and use thereof in automobile engine would not produce equivalent of mechanical reconditioning job, nor any of the beneficial results produced by such reconditioning nor improve motor performance, as claimed by it; and
- (b) Represented that nationally known laboratories had made impartial tests of said "Micaseal" and had certified to the truth and accuracy of its aforesaid representations through such statements as "Tested and Approved by these Laboratories: Kansas City Testing Laboratories, Inc. * * * Automotive Test Laboratories of America * * * Nationally known laboratories put Micaseal to rigid test * * * The Kansas City Testing Laboratory is known in the United States and abroad for its honesty and reliability—and for the carefully conservative statements it makes in its findings * * * We went to a laboratory that would give us only the impartial truth, which was what we wanted, so that our representatives would know the facts about Micaseal," etc., facts being no nationally known laboratory had made an impartial test of said product or issued a certificate certifying to the truth and accuracy of the representations made by it with respect thereto as hereinbefore indicated;

With effect through use of such false and misleading statements and representations in describing its product as above set forth, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such representations were true and with result, as consequence of such belief, that number of consuming public purchased substantial volume of its said product, and trade was thereby diverted unfairly to it from competitors engaged in sale and distribution of preparations designed for similar use and who do not misrepresent the same or their effectiveness:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. R. A. McOwat for the Commission.

Borders, Warrick & Hazard, of Kansas City, Mo., for respondent.

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 United Factories, Inc., a corporation, 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, United Factories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its office and principal place of business at 1302 McGee Street, Kansas City, Mo.

Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing a preparation known as Micaseal, designated and described by the respondent as a reconditioner of automotive engines. During the times herein mentioned respondent has caused said preparation, when sold or ordered, to be transported from its place of business in the State of Missouri to the purchasers thereof at their respective points of location in various States of the United States other than the State of Missouri, in the District of Columbia, and in foreign nations. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between various States of the United States, in the District of Columbia, and with foreign nations.

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PAR. 2. Respondent is now and has been in competition with other corporations and with individuals, firms, and partnerships engaged in the business of selling and distributing preparations designed for similar usage in commerce among and between the various States of the United States, in the District of Columbia, and with foreign nations. Among said competitors in said commerce are many who do not in any manner misrepresent their said preparations or the effectiveness in use thereof.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of Micaseal, respondent has caused statements and representations relative to the effectiveness in use of said preparation to be inserted in advertisements in newspapers, periodicals, circulars and other printed matter circulated and distributed among prospective purchasers located in the various States of the United States, in the District of Columbia, and in foreign nations, and in continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to the listeners thereto located in various States of the United States and in the District of Columbia. Among and typical of the statements and representations contained in said advertisements so distributed and broadcast as aforesaid are the following:

New Way to Recondition Auto Engines for 95% Less.

No Reboring or New Rings; Saves Gas, Oil—Increases Power; Costs Less than Spark Plugs.

Tested and Approved by These Laboratories: Kansas City Testing Laboratories, Inc.

* * * * *
Automotive Test Laboratories of America,
* * * * *

Nationally known laboratories put Micaseal to rigid test * * * The Kansas City Testing Laboratory is known in the United States and abroad for its honesty and reliability—and for the carefully conservative statements it makes in its findings. * * * We went to a laboratory that would give us only the impartial truth, which was what we wanted, so that our representatives would know the facts about Micaseal. Micaseal is not an experiment. It has made good both by the most exacting technical laboratory test and the motorists themselves. Users of Micaseal are protected by our iron-clad guarantee.

This paste-like substance when put into the motors through the spark plug openings, spreads and works itself around leaky pistons and rings, has an affinity for metal, and is not affected by heat of the motor.

While filling up the scores, scratches and scars in cylinder walls and leaky pistons and rings, it literally forms a mirror surfaced mineral plating and a cushion seal which increases compression, adds speed, pep, power and smoothness to the operation of old motors, saves oil and gas and does it at a fraction of the cost of new rings and new bore reconditioning.

Stop excessive oil pumping and gasoline waste of old motors with worn pistons and rings by simply removing spark plugs and injecting Micaseal, a new discovery, into the motor through spark plug openings. Here is the result:

1. Compression is increased;
2. Checks excessive oil pumping;
3. Gasoline mileage increased;
4. Checks excessive carbon formation;
5. New pep and power.

The aforesaid statements and representations, together with others of similar import and meaning not herein set out, purport to be descriptive of respondent's preparation and its effectiveness in use. In the manner and by the means aforesaid the respondent represents directly and by implication that the use of said preparation will effect substantial economies in the operation of an automobile through the lessening of the gasoline and oil consumption of the automobile motor; that Micaseal when put into motors through the spark plug openings fills scores and scratches on cylinder walls and forms a cushion seal which increases compression, checks excessive carbon formation, adds speed, power, and smoothness to the operation of old motors, and in fact reconditions a motor at a saving of 95 percent over the ordinary mechanical methods of reboring the cylinders and refitting the pistons in an automobile engine; that nationally known laboratories have made impartial tests of Micaseal and have certified as to the truth and accuracy of the above representations. Respondent represents, in effect, that the use of said preparation in an automobile engine produces the equivalent of a mechanical reconditioning job.

PAR. 4. In truth and in fact the statements and representations disseminated by respondent as aforesaid are deceptive, misleading, exaggerated and untrue. The use of this preparation will not effect substantial economies in the operation of an automobile by decreasing the gasoline and oil consumption of a motor. It does not cause the formation of a cushion seal which increases compression. Respondent's preparation does not check excessive carbon formation. Its use does not add speed, power, and smoothness to the operation of old motors. It does not recondition a motor, nor refit the pistons in the cylinders in an automobile engine. The use of said preparation in an automobile engine does not produce the equivalent of a mechanical reconditioning job nor does its use produce any of the beneficial results produced by a mechanical reconditioning of an automobile engine. No nationally known laboratory has made an impartial test of Micaseal, nor given a certificate as to the truth and accuracy of the above representations.

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PAR. 5. The use by the respondent of the aforesaid statements and representations, disseminated as aforesaid, has, and had, the tendency and capacity to and does, and did, mislead and deceive members of the purchasing public, situated in various States of the United States, in the District of Columbia, and in foreign nations, into the erroneous and mistaken belief that the aforesaid statements and representations are and were true and into purchasing substantial quantities of respondent's preparation because of said erroneous and mistaken belief. As a direct result thereof trade in commerce among and between the various States of the United States, in the District of Columbia, and with foreign nations has been diverted unfairly to the respondent from its said competitors engaged in selling and distributing preparations designed for similar usages who do not misrepresent their preparations or their effectiveness in use. In consequence thereof, substantial injury has been done by the respondent to competition in commerce among and between the various States of the United States, in the District of Columbia, and with foreign nations.

PAR. 6. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 May 31, 1939, issued and thereafter served its complaint upon the respondent, United Factories, Inc., charging it with the use of unfair methods of competition in commerce, and unfair and deceptive acts in commerce in violation of the provisions of said act. Respondent filed an answer, and thereafter, beginning August 11, 1939, 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 Borders, Warrick & Hazard, attorneys for respondent, before A. F. Thomas, a trial examiner for the Commission, theretofore duly designated by it, which 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 said complaint, the answer thereto, briefs in support of said complaint, and in opposition thereto, and the Commission, having duly considered the matter, and being now fully advised in

the premises, finds that the proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent United Factories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Missouri having its office and principal place of business located in Kansas City, Mo., and is, and has been for more than 2 years last past, engaged in the business of the sale and distribution of a preparation known as "Micaseal," described by respondent as a "reconditioner of automotive engines." During the times herein mentioned, respondent has caused said preparation, or product, when sold, to be transported from its place of business in the State of Missouri, to the purchasers thereof located in various States of the United States other than the State of Missouri, and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between various States of the United States, and in the District of Columbia. Respondent is now, and has been, in competition with other persons engaged in the business of selling and distributing preparations designed for similar uses in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, and for the purpose of inducing the purchase of its preparation "Micaseal," respondent has caused statements and representations relative to the effectiveness in use of said preparation to be inserted in advertisements in newspapers, periodicals, circulars, and other printed matter, circulated and distributed among prospective purchasers located in various States of the United States, and in the District of Columbia, and in continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to the listeners thereto located in various States of the United States, and in the District of Columbia. Among and typical of the statements and representations contained in said advertisements so distributed and broadcast, as aforesaid, are the following:

New way to reconditioning auto engines for 95% less.

No reboring or New Rings; Saves Gas, Oil—Increases Power; Costs Less than Spark Plugs.

Tested and Approved by These Laboratories: Kansas City Testing Laboratories, Inc.

*	*	*	*	*	*	*
Automotive Test Laboratories of America.						
*	*	*	*	*	*	*

Findings

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Nationally known laboratories put Micaseal to rigid test * * * The Kansas City Testing Laboratory is known in the United States and abroad for its honesty and reliability—and for the carefully conservative statements it makes in its findings. * * * We went to a laboratory that would give us only the impartial truth, which was what we wanted, so that our representatives would know the facts about Micaseal. Micaseal is not an experiment. It has made good both by the most exacting technical laboratory test and the motorists themselves. Users of Micaseal are protected by our iron-clad guarantee.

This paste-like substance when put into the motors through the spark plug openings, spreads and works itself around leaky pistons and rings, has an affinity for metal, and is not affected by heat of the motor.

While filling up the scores, scratches and scars in cylinder walls and leaky pistons and rings, it literally forms a mirror surfaced mineral plating and a cushion seal which increases compression, adds speed, pep, power and smoothness to the operation of old motors, saves oil and gas and does it at a fraction of the cost of new rings and new bore reconditioning.

Stop excessive oil pumping and gasoline waste of old motors with worn pistons and rings by simply removing spark plugs and injecting Micaseal, a new discovery, into the motor through spark plug openings. Here is the result:

1. Compression is increased;
2. Checks excessive oil pumping;
3. Gasoline mileage increased;
4. Checks excessive carbon formation;
5. New pep and power.

The aforesaid statements and representations, together with others of similar import and meaning not herein set out, purport to be descriptive of respondent's preparation and its effectiveness in use. In the manner and by the means aforesaid, the respondent represents directly and by implication that the use of said preparation will effect substantial economies in the operation of an automobile through the lessening of the gasoline and oil consumption of the automobile motor; that "Micaseal," when put into motors through the spark plug openings, fills scores and scratches on cylinder walls and forms a cushion seal which increases compression, checks excessive carbon formation, adds speed, power, and smoothness to the operation of old motors, and in fact reconditions a motor at a saving of 95 percent over the ordinary mechanical methods of reboring the cylinders and refitting the pistons in an automobile engine; that nationally known laboratories have made impartial tests of "Micaseal" and have certified as to the truth and accuracy of the above representations. Respondent represents, in effect, that the use of said preparation in an automobile engine produces the equivalent of a mechanical reconditioning job.

PAR. 3. "Micaseal" is a mixture or preparation of mineral and vegetable oils in which is incorporated finely divided dry, expanded

vermiculite. Vermiculite is a mica which possesses the property of expanding to many times its initial volume when it is heated, and when it has been so treated it is known as "expanded" or "exfoliated" vermiculite. In "Micaseal" the vermiculite is presented in the expanded form; in other similar products the vermiculite is presented in its original unexpanded form, and is introduced into the engine in the unexpanded form in the hope that it will find its way into small crevices and the heat of the engine will cause it to expand in place. There is no essential difference in the chemical composition of these various substances or products or preparations or "engine improvers," the scientific principle of which is based on the action of vermiculite in the expanded or unexpanded form. In all cases the claims made for the products are based upon the action of expanded vermiculite.

PAR. 4. The statements and representations disseminated by respondent as herein set forth, are deceptive, misleading, exaggerated, and untrue. The use of this preparation will not effect substantial economies in the operation of an automobile by decreasing the gasoline and oil consumption of a motor. It does not cause the formation of a cushion seal which increases pressure. It does not check excessive carbon formation. Its use does not add speed, power and smoothness to the operation of old motors. It does not recondition a motor nor refit the pistons in the cylinders in an automobile engine. The use of said preparation in an automobile engine does not produce the equivalent of a mechanical reconditioning job, nor does its use produce any of the beneficial results produced by the mechanical reconditioning of an automobile engine. "Micaseal" will not improve the performance of the motor engine in the manner represented by respondent in its advertising as hereinabove quoted.

PAR. 5. No nationally-known laboratory has made an impartial test of "Micaseal" or has issued a certificate which certifies to the truth and accuracy of the foregoing representations made by respondent.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in describing its products, as hereinabove set out, were, and are, calculated to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true. As a result of this erroneous belief, a number of the consuming public have purchased a substantial volume of respondent's said product with the result that trade has been diverted unfairly to respondent from competitors engaged in selling and distributing preparations designed for similar use, who do not misrepresent their preparations or their effectiveness in use.

Order

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CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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 Arthur F. Thomas, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and briefs filed herein, 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, United Factories, Inc., 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 preparations known as Micaseal, or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the name or under any other name in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the use of respondent's preparation will decrease the oil or gas consumption of a motor, increase engine compression or check excessive oil pumping.
2. Representing that the use of respondent's preparation will check excessive carbon formation or add speed, power, or smoothness to the operation of old motors.
3. Representing that the use of respondent's preparation will recondition a motor or produce results equal to or comparable with a mechanical reconditioning of an automobile engine.
4. Representing that nationally known laboratories have made impartial tests of Micaseal and have certified that Micaseal has merit when used in an automobile engine.

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

C. I. LEVIN AND EDWARD JOHNSON, TRADING AS
MIDWEST MERCHANDISE COMPANY

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

Docket 4058. Complaint, Mar. 12, 1940—Decision, June 10, 1940

Where two individuals engaged in sale and distribution of knives, watches, radios, cameras, and various other articles of merchandise to dealer purchasers in various States and in the District of Columbia, in competition with others engaged in the sale and distribution of like and similar merchandise in commerce as aforesaid—

Sold and distributed to dealers certain assortments of said merchandise which were so packed and assembled as to involve use of game of chance, gift enterprise, or lottery scheme when such merchandise was sold and distributed to the consumer thereof, and which included (1) replica of "Ferdinand the Bull" together with punchboard for use in sale and distribution of said replica, and number of packages of cigarettes, supplied by dealer, under plan by which person punching certain numbers received in return for 2 cents paid said replica or cigarettes, value of which was in excess of amount paid for chance, and others receive nothing, and (2) other assortments, together with various punchboards and push card devices for use in sale and distribution of merchandise in question by means of game of chance, gift enterprise, or lottery scheme involving sales plan and method similar to that described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others means of conducting chasers by whom they were exposed and sold to purchasing public in accordance with such sales plans or methods by retail dealers who purchased or secured said assortments, together with said punchboards or push cards, either directly or indirectly, and exposed said devices and merchandise to purchasing public and sold and distributed same in accordance with such sales plans or methods as above described, involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, 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 chance to win something by chance or any other method contrary to public policy and refrain therefrom;

With tendency and capacity to induce a substantial number of purchasing public to buy their said merchandise in preference to similar merchandise offered by competitors, and with result that many dealers and ultimate purchasers of merchandise similar to that distributed by them were attracted by their said sales plans or methods, and by element of chance involved in sale thereof as above described, and were thereby induced to purchase said merchandise from them in preference to similar products