

Syllabus

IN THE MATTER OF
HENRY O. STRIKER, TRADING AS STROMBERG
IGNITION COMPANY

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

Docket 4064. Complaint, Mar. 13, 1940—Decision, Aug. 14, 1940

Where a corporation, and corporate successor to business thereof, had long engaged, under name "Stromberg," in manufacture of carburetors, coils, and various other automobile accessories sold under name aforesaid, to purchasers in the various States and in the District of Columbia, and valuable good will had been built up by said companies in such name as applied to their said products, and particularly those above set forth, and purchasers and prospective purchasers of automobiles and automobile accessories and members of respective trades dealing therein had, through long usage and over long period of time, identified automotive and other mechanical apparatus, devices, and accessories which bore name "Stromberg" as products of said well and favorably known companies; and, long thereafter, individual engaged in manufacture, sale and distribution of automotive device, or so-called "Condenser," sold and distributed as spark intensifier for use on all makes of automotive vehicles, in commerce among the various States and in the District of Columbia, to retailers and to agents or representatives of said individual in various States and in said District, for resale to consuming public, and direct to purchasers at various points of location throughout the United States through C. O. D. shipments—

- (a) Began use, without authority or consent of said companies, and for purpose of creating demand on part of purchasing public for his said products, of word "Stromberg" as trade name and brand therefor, and continued to make use thereof, and marked and branded therewith his said automotive device, and through statements and representations made by his agents or representatives and through circulars, handbills, and other similar printed or written matter, used and featured said word as such trade and brand name or designation, and in circulars and handbills, and in advertising matter displayed on sides of large trucks and trailers giving purported demonstrations at various places throughout the United States, featured word in question;

With capacity and tendency to confuse, mislead, and deceive purchasers and prospective purchasers into mistaken and erroneous belief that his said device was product of well and favorably known company above referred to, long manufacturer and seller, under said name, as aforesaid set forth, of automotive accessories and devices; and

- (b) Represented, through statements and representations relative to said device in circulars and handbills and on boxes or cartons containing same, and on device itself, and in other printed or written matter distributed generally to purchasers and prospective purchasers in various States and in said District, and through matter which he caused to be distributed

and disseminated by his said retailers, agents, and representatives, that product in question was capable of increasing power of motor and eliminated spark plug trouble and saved oil or gasoline, and that users were able to drive an increased number of miles on a change of oil, and that it reduced carbon and made starting easier; and

- (c) Represented, as aforesaid, that use of such device would raise voltage and reduce amperage of current used in automobiles, or gasoline motors, and would improve ignition system therein, in keeping with other improvements that had been made by the automotive industry, and that said condensers had, as indicated, beneficial effect;

Facts being it would not increase power of motor, eliminate spark plug trouble or save user oil or gasoline, nor reduce carbon or make starting easier, nor raise voltage and reduce amperage of current used, nor have any beneficial effect at all, and said various statements and representations, as above set out and indicated, were false and misleading; and

- (d) Represented that said device had been approved and endorsed by a recognized automotive engineers' association equipped with laboratories for testing and approving, and which did test and approve, various automotive equipment, through setting forth on boxes or cartons containing his said product words "* * * endorsed and approved by the Automotive Engineers Association of America," together with purported "Seal of Approval" consisting of design made up of automobile tire and wheel, with name of association and initial letters thereof printed on design in question, facts being his said product had not been approved or endorsed by recognized automotive association or automotive engineers' association with necessary laboratory equipment to test automotive devices, and which did actually test, attest and approve automotive equipment; and

- (e) Represented exaggerated fictitious price as that of said device in so-called "special offer" by him and his retailers, through statement "SPECIAL 30-DAY OFFER, Stromberg Ignition Co., Detroit, Mich. Please mail me one Stromberg Condenser at the special price, \$1.50 * * *," facts being price of \$1.50 at which said device was offered in so-called "special offer," was in excess of and more than the price at which his said device was generally and customarily sold to purchasing public by retailers, agents, and representatives, and was not in any sense, as indicated, a special price good only for 30 days, nor offer more advantageous than offers generally and customarily made by him to all other purchasers and prospective purchasers;

With result of placing thereby, through means and manner set forth, directly in hands of unscrupulous or uninformed retailers, agents, and representatives means and instrumentality whereby they had been and were enabled to mislead and deceive members of purchasing public in respects above set out, and with effect of misleading and deceiving many members of said public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of substantial quantities of his said devices as result thereof:

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. Robert Mathis, Jr., for the Commission.

Mr. Hall Johnston, of Washington, D. C., for respondent.

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Complaint

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 Henry O. Striker, an individual, trading as Stromberg Ignition Co., hereinafter referred to as respondent, has violated the provisions of 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, Henry O. Striker, is an individual trading as Stromberg Ignition Co., and having his principal office and place of business at 7320 Tireman Avenue in the city of Detroit, State of Michigan.

PAR. 2. Respondent is now, and has been for more than 6 years last past, engaged in the manufacture, sale, and distribution of an automotive device or attachment designated "'Stromberg' Condenser" and sometimes designated as "'Stromberg' Master Condenser," which is sold and distributed as a spark intensifier to be used on all makes of automobiles, tractors, trucks, and gasoline motors. Respondent causes said devices, when sold by him, to be transported from his place of business in the State of Michigan to retail dealers and other purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said devices sold by him in commerce among and between the various States of the United States and in the District of Columbia. The bulk of respondent's sales are made to retail dealers, agents, or representatives of respondent located in the various States of the United States and in the District of Columbia, who in turn sell said devices to the purchasing public; a large number of respondent's sales are made by C. O. D. shipments mailed directly to purchasers thereof at their various points of location throughout the United States.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said automotive devices, respondent has caused various statements and representations relative to said products to be inserted in circulars, handbills, on the boxes or cartons containing said products, on the product itself, and in other printed or written matter, which are distributed generally to purchaser and prospective purchasers situated in various States of the United States and in the District of Columbia. In addition to the written or printed matter disseminated as aforesaid, respondent has caused various statements and representations to be made by his said

retail dealers, agents, and representatives for the purpose of inducing, and which are likely to induce, the purchase of said products as aforesaid.

Among and typical of the statements and representations used and disseminated by respondent as aforesaid are the following:

Just a few features of the "Stromberg" Master Condenser:

1. Increases Power—Burns more of the gasoline in the cylinder. Burnt gasoline is power. Unburnt gasoline is carbon.

2. Eliminates Sparkplug Trouble—Fires oily or "wet" plugs in oil-pumping cylinders. The blowing or disruptive discharge at the plug points keeps the plugs clean.

3. Saves Oil—Most car owners change oil every 500 miles, because gasoline (unburned) leakage thins the lubricant. The STROMBERG MASTER CONDENSER burns all the gasoline, stops the leakage completely, so that oil can often be used for 2,500 miles or more.

4. Saves Gasoline, both by burning more of the charge in the cylinder and running on a "leaner" mixture.

5. Reduces Carbon—Carbon is unburnt gasoline—by completely burning all the gasoline in the cylinder there is no waste or carbon left to form on the cylinder or piston heads, gum up the valve and cause other troubles.

6. Makes Easy Starting—Fires both a leaner or a richer mixture than the ordinary ignition system.

7. The STROMBERG CONDENSER accomplishes its purpose by raising the voltage of the current, and at the same time reducing the amperage. It consumes less electricity than is used without it. It creates an impulsive rush of high pressure current which overcomes any resistance offered by carbon or oil on the points of the plug.

Success of the Stromberg Master Condenser.

8. The manufacturers have experts on all parts of the automobile, and each factory must have its new feature each year, while the ignition system, however, has lagged during the same period of time and has been found wanting in many respects until our discovery of the STROMBERG MASTER CONDENSER which puts the ignition system in keeping with the balance of the automobile improvements for all makes of automobiles, tractors, trucks, and gasoline motors.

9. SPECIAL 30-DAY OFFER, Stromberg Ignition Co., Detroit, Mich. Please mail me one Stromberg Condenser at the special price, \$1.50 * * *

10. This is a genuine "Stromberg" product, and gentlemen, when the name Stromberg is on it, whether it be a radio, carburetor, or this merchandise, you do not have to be afraid to buy it because it is good merchandise.

11. You all know what the name "Stromberg" stands for, etc. * * *

12. The Stromberg condenser is endorsed and approved by the Automotive Engineers Association of America.

This last statement, numbered 12, is made on the boxes or cartons containing said products, and immediately above said statement is a purported "Seal of Approval" consisting of a design made up of an automobile tire and wheel with the words "Automotive Engineers Association of America" printed on the tire, and the letters "A. E. A. A." printed between the spokes of said wheel.

Through the use of the aforesaid statements and representations and others of similar import or meaning, not herein set out, the respondent

has represented that its said automotive device is capable of increasing the power of the motor; that its use eliminates spark-plug trouble and saves the user various quantities of oil and gasoline; that its users are able to drive up to 2,500 miles or more on a change of oil; that the use of said device reduces carbon and makes easier starting for the motor; that manufacturers of automobiles and gasoline motors have neglected the advancement and development of the ignition systems in automobiles and gasoline motors and that respondent's product puts the ignition system in keeping with the other improvements made in said motors; that the offer made on said order blank as set forth in this paragraph to each purchaser and prospective purchaser is a special 30 day offer which will expire at the end of that time and is more advantageous than the offer generally made to each purchaser and prospective purchaser; that respondent's automotive device is approved and endorsed by a recognized automotive association which is equipped with laboratories for testing and approving, and which does test and approve, various automotive equipment.

PAR. 4. The Stromberg Carburetor Co. was a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its factory and principal place of business in the city of Detroit, State of Michigan. It was, and had been since May 1907, engaged in the manufacture of carburetors, coils, and various other automobile accessories which it sold under the name "Stromberg." In April 1930, the business operated under the name Stromberg Carburetor Co. was taken over by the Bendix Stromberg Carburetor Co., a corporation, which continued the operation of the business and continued to sell said products under the name "Stromberg." Said Bendix Stromberg Carburetor Co. is now engaged in the manufacture of said products and in offering for sale and selling the same to purchasers located in the various States of the United States and in the District of Columbia, and causes its said products, when sold, to be transported from its place of business located in the city of Detroit, State of Michigan, to the purchasers thereof at their respective points of location throughout the United States. These companies have built up and enjoyed a valuable good will in the name "Stromberg" as applied to said products, particularly with respect to carburetors, coils, and other automobile accessories and devices.

Purchasers and prospective purchasers of automobiles and automobile accessories, as well as members of the respective trades dealing therein, have, through long usage and over a long period of time, identified automotive and other mechanical apparatus, devices and accessories which bear the name "Stromberg" as being the products

of the well and favorably known Stromberg Carburetor Co. or the well and favorably known Bendix Stromberg Carburetor Co.

PAR. 5. In the course and conduct of his business as described herein, and for the purpose of creating a demand on the part of the purchasing public for his products, said respondent, without authority or consent of the Stromberg Carburetor Co. or the Bendix Stromberg Carburetor Co., began, at a date long subsequent to the adoption and use by said Bendix Stromberg Carburetor Co. of the word "Stromberg" as a trade name or designation of its products, to use the word "Stromberg" as a trade name or brand for his said product and has continued until the present time to use the same in the manufacture, sale, and distribution of his product. Respondent has caused and now causes said product to be marked and branded with the word "Stromberg," and through statements and representations made by respondent's agents or representatives and in circulars, handbills, and other similar printed or written matter used in soliciting the sale of, and selling, said product among purchasers and prospective purchasers, respondent has used and featured, and now uses and features, the word "Stromberg" as his trade name and as the brand name or designation for said product. In advertising matter which is displayed on the sides of large trucks and trailers which are giving a purported demonstration of respondent's product at various places throughout the United States, and in said circulars and handbills, respondent has caused the word "Stromberg" to be more prominently displayed than the other parts of said advertising.

PAR. 6. The statements and representations as set forth herein, and others of similar import and meaning not herein set out, are false and misleading, for in truth and in fact the automotive devices which the respondent sells and offers for sale as aforesaid will not increase the power of the motor, eliminate spark-plug trouble, or save the user oil or gasoline. Said devices will not reduce carbon or make starting of the motor easier, nor will they raise the voltage and at the same time reduce the amperage of the current. Said devices have no beneficial effect at all on the operation of a gasoline motor, nor do said devices improve the ignition system so that it is in keeping with the other improvements that have been made in the automotive industry.

The price of \$1.50 at which said device is offered in said so-called special offer by the respondent and his retail dealers, agents, or representatives to prospective purchasers is not in any sense a special price which is good for only 30 days nor is the offer more advantageous than the offers generally and customarily made by the respondent to all other purchasers and prospective purchasers of said devices, for in truth and in fact the price of \$1.50 at which said device is offered for

sale in said so-called special offer is in excess of and more than the price at which respondent's said device is generally and customarily sold to the purchasing public by retail dealers, agents and representatives. Respondent's said product has not been, and is not, approved or endorsed by a recognized automotive association or a recognized automotive engineers' association which has the necessary laboratory equipment for testing automotive devices and which does actually test, attest, and approve automotive equipment.

PAR. 7. The use by the respondent as hereinabove alleged of the word "Stromberg" as a trade name and brand for his product and in advertising matter relating thereto has had, and now has, the tendency and capacity to confuse, mislead, and deceive purchasers and prospective purchasers into the mistaken and erroneous belief that his product so designated and described is the product of the well and favorably known Bendix Stromberg Carburetor Co., manufacturer of automotive accessories and devices which are sold under the name "Stromberg."

PAR. 8. Respondent places directly in the hands of unscrupulous or uninformed retail dealers, agents, and representatives a means and instrumentality whereby said retail dealers, agents, and representatives have been, and are, enabled to mislead and deceive members of the purchasing public in the respects herein mentioned.

PAR. 9. The acts and practices of the respondent in using the aforesaid false and misleading statements and representations have had, and now have, the capacity and tendency to, and did and do, mislead and deceive many members of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations are true, and into the purchase of substantial quantities of respondent's said automotive devices as a result of such erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute 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 the 13th day of March 1940, issued and served its complaint in this proceeding upon said respondent, Henry O. Striker, an individual, trading as Stromberg Ignition Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 2,

1940, the respondent filed his answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Hall Johnston, and W. T. Kelley, chief counsel of the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of charges stated in the complaint, or in opposition thereto and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Henry O. Striker, is an individual trading as Stromberg Ignition Co., and having his principal office and place of business at 14819 Charlevoix Avenue in the city of Detroit, State of Michigan.

PAR. 2. Respondent is now, and has been for more than 6 years last past, engaged in the manufacture, sale, and distribution of an automotive device designated as "‘Stromberg’ Condenser" and sometimes designated as "‘Stromberg’ Master Condenser," which is sold and distributed as a spark intensifier to be used on all makes of automobiles, tractors, trucks, and gasoline motors. Respondent causes said device, when sold by him, to be transported from his place of business in the State of Michigan to retail dealers and other purchasers in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device sold by him in commerce among and between the various States of the United States and in the District of Columbia. The bulk of respondent's sales are made to retail dealers, agents, or representatives of respondent located in the various States of the United States and in the District of Columbia, who in turn sell said device to the consuming public. A large number of respondent's sales are made by c. o. d. shipments mailed directly to purchasers at their various points of location throughout the United States.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said automotive device, respondent has caused various statements and representations relative to said device to be inserted in circulars, handbills, on the boxes or cartons containing said device, on the device itself, and in other printed or written matter, which are distributed generally to purchasers and prospective purchasers in various States of the United States and in the District of Columbia. In addition to the written or printed matter distributed and disseminated as aforesaid, respondent has caused various statements and representations to be made by his said retail dealers, agents, and representatives for the purpose of inducing, and which are likely to induce, the purchase of said products as aforesaid.

Among and typical of the statements and representations used and disseminated by respondent as aforesaid are the following:

Just a few features of the "Stromberg" Master Condenser:

1. Increases Power—Burns more of the gasoline in the cylinder. Burnt gasoline is power. Unburnt gasoline is carbon.

2. Eliminates Sparkplug Trouble—Fires oily or "wet" plugs in oil-pumping cylinders. The blowing or disruptive discharge at the plug points keeps the plugs clean.

3. Saves Oil—Most car owners change oil every 500 miles, because gasoline (unburned) leakage thins the lubricant.

The STROMBERG MASTER CONDENSER burns all the gasoline, stops the leakage completely, so that oil can often be used for 2,500 miles or more.

4. Saves Gasoline, both by burning more of the charge in the cylinder and running on a "leaner" mixture.

5. Reduces Carbon—Carbon is unburnt gasoline—by completely burning all the gasoline in the cylinder there is no waste or carbon left to form on the cylinder or piston heads, gum up the valve and cause other troubles.

6. Makes Easy Starting—Fires both a leaner or a richer mixture than the ordinary ignition system.

7. The STROMBERG CONDENSER accomplishes its purpose by raising the voltage of the current, and at the same time reducing the amperage. It consumes less electricity than is used without it. It creates an impulsive rush of high pressure current which overcomes any resistance offered by carbon or oil on the points of the plug.

Success of the Stromberg Master Condenser.

8. The manufacturers have experts on all parts of the automobile, and each factory must have its new feature each year, while the ignition system, however, has lagged during the same period of time and has been found wanting in many respects until our discovery of the STROMBERG MASTER CONDENSER which puts the ignition system in keeping with the balance of the automobile improvements for all makes of automobiles, tractors, trucks and gasoline motors.

9. SPECIAL 30-DAY OFFER. Stromberg Ignition Co., Detroit, Mich. Please mail me one Stromberg Condenser at the special price, \$1.50 * * *

10. This is a genuine "Stromberg" product, and Gentlemen, when the name Stromberg is on it, whether it be a radio, carburetor, or this merchandise, you do not have to be afraid to buy it because it is good merchandise.

11. You all know what the name "Stromberg" stands for, etc. * * *

12. The Stromberg condenser is endorsed and approved by the Automotive Engineers Association of America.

This last statement, numbered 12, is made on the boxes or cartons containing said products, and immediately above said statement is a purported "Seal of Approval" consisting of a design made up of an automobile tire and wheel with the words "Automotive Engineers Association of America" printed on the tire, and the letters "A. E. A. A." printed between the spokes of said wheel.

Through the use of the aforesaid statements and representations and others of similar import or meaning, the respondent has represented that its said automotive device is capable of increasing the power of the motor; that its use eliminates spark-plug trouble and saves the user oil and gasoline; that its users are able to drive up to 2,500 miles or more on a change of oil; that the use of said device reduces carbon and makes easier starting for the motor; that manufacturers of automobiles and gasoline motors have neglected the advancement and development of the ignition systems in automobiles and gasoline motors and that respondent's product puts the ignition system in keeping with the other improvements made in said motors; that offers made to purchasers and prospective purchasers is a special 30-day offer which will expire at the end of that time and is more advantageous than the offer generally made to each purchaser and prospective purchaser; that respondent's automotive device is approved and endorsed by a recognized automotive association which is equipped with laboratories for testing and approving, and which does test and approve, various automotive equipment.

PAR. 4. The Stromberg Carburetor Co. was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its factory and principal place of business in the city of Detroit, State of Michigan. It was, and had been since May 1907, engaged in the manufacture of carburetors, coils, and various other automobile accessories which it sold under the name "Stromberg." In April, 1930, the business operated under the name Stromberg Carburetor Co. was taken over by the Bendix Stromberg Carburetor Co., a corporation, which continued the operation of the business and continued to sell said products under the name "Stromberg." Said Bendix Stromberg Carburetor Co. is now engaged in the manufacture of said products and in offering for sale and selling the same to purchasers located in the various States of the United States and in the District of Columbia, and causes its said products, when sold, to be transported from its place of business located in the city of Detroit, State of Michigan, to the purchasers

thereof at their respective points of location throughout the United States. These companies have built up and enjoyed a valuable good will in the name "Stromberg" as applied to said products, particularly with respect to carburetors, coils, and other automobile accessories and devices.

Purchasers and prospective purchasers of automobiles and automobile accessories, as well as members of the respective trades dealing therein, have, through long usage and over a long period of time, identified automotive and other mechanical apparatus, devices, and accessories which bear the name "Stromberg" as being the products of the well and favorably known Stromberg Carburetor Co. or the well and favorably known Bendix Stromberg Carburetor Co.

PAR. 5. In the course and conduct of his business, and for the purpose of creating a demand on the part of the purchasing public for his products, said respondent, without authority or consent of the Stromberg Carburetor Co. or the Bendix Stromberg Carburetor Co. began, at a date long subsequent to the adoption and use by said Bendix Stromberg Carburetor Co. of the word "Stromberg" as a trade name or designation of its products, to use the word "Stromberg" as a trade name or brand for his said product and has continued until the present time to use the same in the manufacture, sale, and distribution of his product. Respondent has caused, and now causes, said product to be marked and branded with the word "Stromberg," and through statements and representations made by respondent's agents or representatives and in circulars, handbills, and other similar printed or written matter used in soliciting the sale of, and selling, said product among purchasers and prospective purchasers, respondent has used and featured, and now uses and features, the word "Stromberg" as his trade name and as the brand name or designation for said product. In advertising matter which is displayed on the sides of large trucks and trailers which are giving purported demonstrations of respondent's product at various places throughout the United States, and in said circulars and handbills respondent has caused the word "Stromberg" to be more prominently displayed than the other parts of said advertising.

PAR. 6. Said statements and representations, made and used by the respondent as above set forth, are false and misleading, for in truth and in fact the automotive devices which the respondent sells and offers for sale as aforesaid will not increase the power of the motor, eliminate spark-plug trouble, or save the user oil or gasoline; said devices will not reduce carbon or make starting of the motor easier, nor will they raise the voltage and at the same time reduce the amper-

Findings

31 F. T. C.

age of the current; said devices have no beneficial effect at all on the operation of a gasoline motor, nor do said devices improve the ignition system so that it is in keeping with the other improvements that have been made in the automotive industry; the price of \$1.50 at which said device is offered in said so-called special offer by the respondent and his retail dealers, agents, or representatives to prospective purchasers is not in any sense a special price which is good for only 30 days nor is the offer more advantageous than the offers generally and customarily made by the respondent to all other purchasers and prospective purchasers of said device; in truth and in fact the price of \$1.50 at which said device is offered for sale in said so-called special offer is in excess of, and more than, the price at which respondent's said device is generally and customarily sold to the purchasing public by retail dealers, agents, and representatives; respondent's said product has not been, and is not, approved or endorsed by a recognized automotive association or a recognized automotive engineers' association which has the necessary laboratory equipment for testing automotive devices and which does actually test, attest, and approve automotive equipment.

PAR. 7. The use by the respondent of the word "Stromberg" as a trade name and brand for his product and in advertising matter relating thereto, as hereinabove set out, has had, and now has, the tendency and capacity to confuse, mislead, and deceive purchasers and prospective purchasers into the mistaken and erroneous belief that his device is the product of the well and favorably known Bendix Stromberg Carburetor Co., manufacturer of automotive accessories and devices which are sold under the name "Stromberg."

PAR. 8. By the means and in the manner set forth herein, respondent places directly in the hands of unscrupulous or uninformed retail dealers, agents, and representatives a means and instrumentality whereby said retail dealers, agents, and representatives have been, and are enabled to mislead and deceive members of the purchasing public in the respects herein mentioned.

PAR. 9. The acts and practices of the respondent in using the aforesaid false and misleading statements and representations have had, and now have, the capacity and tendency to, and did and do, mislead and deceive many members of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations are true, and into the purchase of substantial quantities of respondent's said automotive devices as a result of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury of the public and constitute 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, and a stipulation as to the facts entered into between the respondent herein by his attorney, Hall Johnston, and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that, without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Henry O. Striker, an individual, trading as Stromberg Ignition Co., his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its automotive device designated "‘Stromberg’ Condenser," and sometimes designated as "‘Stromberg’ Master Condenser," which has been sold as a spark intensifier for various types of motors, or any other device which functions in a similar manner, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said device is capable of increasing the power of the motor or that its use eliminates spark-plug trouble or saves oil or gasoline to the user thereof; that users of said device are able to drive an increased number of miles on a change of oil or that said device reduces carbon or makes starting of the motor easier.

2. Representing that the use of said device will raise the voltage or reduce the amperage of the current used in automobiles or gasoline motors.

3. Representing that said device will improve the ignition system in gasoline motors in keeping with the other improvements that have been made by the automotive industry.

4. Representing in any manner or by any means that said device will have any beneficial effect at all on the operation of a gasoline motor.

5. Representing as the customary or regular price or value of said device prices or values which are in fact fictitious and greatly in excess of the price at which said device is customarily and ordinarily offered for sale and sold in the normal course of business.

6. Representing that said device is approved or endorsed by a recognized automotive engineers' association or other similar organization which is equipped with laboratories for testing and approving and which does test and approve various automotive equipment.

7. Representing that the price at which said device is offered for sale is to be in effect for a limited period of time only, when the price at which said device is offered for sale is that for which the device is customarily and ordinarily sold in the normal course of business.

8. Using the name, "Stromberg," or any other name similar in spelling or phonetic sound, as a trade name for doing business or as a brand name in designating respondent's said product.

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

Syllabus

IN THE MATTER OF
R. FRANK YANCEY, TRADING AS THE MONARCH
CHINA COMPANY

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

Docket 3410. Complaint, May 7, 1938—Decision, Aug. 15, 1940

Where an individual engaged in offer, sale, and distribution of earthenware products, including dinnerware or, as by him designated, "chinaware," to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale in commerce as aforesaid of such products—

- (a) Represented, through advertising literature made use of by him in soliciting sale of, and in selling, said products to prospective purchasers, and through sales promotion literature, and agents and traveling salesmen, that offer and sale of assortments of dinnerware sets by him was in nature of a "clearance sale" of accumulated assortments not disposed of in regular course of manufacture and sale, offered at purported special bargain prices by virtue of being accumulated stock not used by manufacturer because of certain defects, but in other respects of high grade;

Facts being so-called "chinaware" was supplied to him by manufacturer in regular course of business and made to his order, and not taken or selected from high-grade stock, and was not offered and sold as "clearance sale," but at prices which did not constitute any special bargain or price advantage, but were those at which he regularly and customarily sold such products in the regular and continuing course of business;

- (b) Represented, as aforesaid, that he was the manufacturer of the products offered and sold by him, and that purchase thereof from him constituted direct purchase from manufacturer, eliminating competition and thereby saving purchaser against added cost of expense normally involved in making purchases through distributors and jobbers or any source other than manufacturer, through such statements, among others, as " * * * packed right at the factory and shipped direct to you," "BUY DIRECT, ELIMINATE COMPETITION," etc.;

Facts being he was not, as represented, manufacturer, for purchase of whose products direct, and for dealing with whom, there is preference on part of dealers and purchasing public as securing sellers, in their opinion, superior quality, better prices and other benefits not obtainable through distributor and jobber middlemen, but, on contrary, was distributor or jobber of such products, and purchases of such products from him did not constitute direct purchases from manufacturer and eliminate competition and save purchaser against any cost and expense normally involved in dealing with distributor or jobber; and

- (c) Represented, directly and through his representatives, that products offered and sold were of same grade and quality as sample pieces supplied by him to his agents for display in solicitation and sale of his merchandise;

Facts being samples aforesaid were of materially higher grade and quality than sets or so-called "chinaware" sold and delivered to customers after receipt