

IN THE MATTER OF
KIDDER OIL COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 3026. Order, May 20, 1941

Modified order, pursuant to provisions of section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which (1) Commission on September 19, 1939, 29 F. T. C. 987, made its findings and conclusion and issued cease and desist order; and (2) Circuit Court of Appeals for the Seventh Circuit, on January 15, 1941, in *Kidder Oil Co. v. Federal Trade Commission*, 117 F. (2d) 892, 32 F. T. C. 1823, rendered its decision modifying said order of Commission and on February 28, 1941, issued its decree modifying same and directing Commission to modify such order in accordance therewith—

Requiring respondent, its officers, etc., in connection with the offer, etc., of its product "Koatsal," in commerce, to 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, when used as a lubricant in a motor operated under "full-film" conditions, 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 the lubricating qualities thereof, when used as a lubricant under "full-film" conditions, are any greater than the lubricating qualities of the oil therein contained; and (4) that the usual and customary earnings or profit to be derived from the sale of its product by distributors, etc., are larger than usual amounts actually so earned under normal conditions in the due course of business; as in order below in detail set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on September 19, 1939, the Commission made its findings as to the facts and concluded therefrom that the respondent had violated the provisions of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on January 15, 1941, the United States Circuit Court of Appeals for the Seventh Circuit rendered its decision modifying the Commission's order to cease and desist and on February 28, 1941, the aforesaid Circuit Court of Appeals issued its decree modifying the aforesaid order of the Commission and directed the Commission to modify its aforesaid order to cease and desist in accordance with said decree;

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues

1542

Modified Order

this its modified order to cease and desist in conformity with the said court decree:

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, when the same is used as a lubricant in a motor operated under "full-film" conditions, 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 the lubricating qualities of Koatsal, when the same is used as a lubricant in a motor operated under "full-film" conditions, are any greater than the lubricating qualities of the oil which it contains.

4. 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, Kidder Oil Co., a corporation, shall within 30 days after the entry 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

ALLIED SPECIALTIES, INC., AND RALPH J. BIERY, WILLIAM G. WHITE, AND ANNE STRINGER

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

Docket 3360. Complaint, Mar. 17, 1938—Decision, May 21, 1941

Where a corporation and its president, and secretary-treasurer, who directed and controlled its policies and operations, and who had been engaged in similar practices through the instrumentality of previous corporations, since dissolved; engaged in the competitive interstate sale and distribution of nut display warmers and peanuts for use therein, under arrangements by which owners or proprietors of the business where the warmers were placed and said corporation each retained a certain proportion of the 5 cents charged per bag of nuts, and 2 cents per bag were retained by the purchaser of the warmers;

In selling their said nut display warmers, usually in lots of 25 or more, through salesmen employed by them on a commission basis whom they furnished with advertisements to be placed in the local papers in towns in which they were preparing to solicit orders containing such typical statements as "\$2,600 CASH will purchase controlling interest in business. Worth \$500 monthly to right man. * * * Unusual circumstances have made this opening available. Address Box —," and furnished with a prearranged sales talk outlining the plan of operation;

- (a) Represented that exorbitant profits would be earned from operation of such warmers, and made use of a guarantee or repurchase agreement to be attached to contract of purchase, which provided that if a cash return of 120 percent was not realized on the investment, they would repurchase the warmers at the price of the original investment less certain rental deductions, or resell the territory; facts being none of the purchasers earned \$300 to \$500 monthly or any other substantial sum, as advertised, method of vending proposed was impractical and would not induce sufficient sales to cover cost of operation of said warmers, which did not earn the average amount claimed for them, and their earning capacity was grossly exaggerated;
- (b) Represented, as aforesaid, that, upon the purchase of a designated number of said devices, they would give the purchaser exclusive territory and would place the warmers in various locations for him; facts being that, in many instances, they sold the warmers to more than one purchaser operating in territory granted as exclusive, and did not find location for operation; and
- (c) Authorized and made use of repurchase agreement above described notwithstanding the fact they did not live up to its provisions, but, on the contrary, refused to accept the return of any warmers or to resell the territory where they were located;

With effect of misleading and deceiving a substantial number of customers and prospective purchasers of said nut display warmers into the erroneous