

IN THE MATTER OF
WESTERN AUTO SUPPLY COMPANY

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

Docket 4054. Complaint, Mar. 11, 1940—Decision, June 18, 1941

Where a corporation long engaged in the interstate sale and distribution, among other products, of automobile tires and tubes through its own retail stores located in various States; issuing price lists for its various grades of tires to its said stores, which did not, however, usually sell at the prices so designated but sold at lesser prices brought about by discounts from list prices and by trade-in allowances of 10 percent or more of the list price of new tires purchased for old tires;

In advertisements in connection with sales conducted through its said stores, in various newspapers and other periodicals of general circulation and by catalogs distributed by the stores, copy for which was prepared by it at its main office and forwarded to its retail stores and by them inserted in local newspapers and other advertising media, and in which, as indicated below, it represented that its products were being sold at purported discounts and savings from the regular retail prices—

- (a) Represented by such statements as "20 PER CENT DISCOUNT Off Our Regular Low Prices! Davis DeLuxe Tires" followed by a list of sizes with prices, that by paying the sales price indicated for any particular size tire a saving or discount of 20 percent was provided, based upon the regular sales price; when in fact, such represented discount was untrue for the reason that the listed "Regular Price" made no allowance for the trade-in value of purchaser's old tires, which by the terms of said advertisement were required to be turned in; giving effect to the minimum trade-in allowance of 10 percent for used tires, the saving or discount was approximately 11 percent rather than 20 percent as advertised; and the savings were further exaggerated by reason of the fact that the prices designated as "regular prices" were actually the list prices, and therefore not the prices customarily charged;
- (b) Represented that in the purchase of a Davis DeLuxe Tire during a particular sale, the purchaser received a Davis tube free and saved the difference between the advertised sales price of tire and tube and the listed price for nationally advertised tire and tube; the facts being that such savings were exaggerated and untrue in that the advertised price for its tire and tube made an allowance of 10 percent for purchaser's old tires, while the listed price for nationally advertised tire and tube made no such allowance, although it was customary for dealers to make a trade-in allowance of at least 10 percent; and the quoted prices of nationally advertised tires were the list prices rather than the selling prices, which latter are usually less than list prices without regard to the trade-in value of old tires;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, which understands and believes that represented savings or discounts from "list prices" are reductions from the regular

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retail sales price of the same tires in effect immediately prior to such advertised sale, into the erroneous belief that such representations were true, and that its tires and tubes were sold at the saving or discount advertised, and with result of inducing a portion of such public, because of its mistaken belief, to purchase its said products:

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

Mr. William M. King for the Commission.

Mr. E. A. TenBrook, 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 Western Auto Supply Co., a corporation herein 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. The respondent, Western Auto Supply Co., is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business located at 2107 Grand Avenue in the city of Kansas City, State of Missouri.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution, among other products, of automobile tires and tubes.

In the course and conduct of its business, the respondent sells and distributes said automobile tires and tubes to the purchasing public through and by means of various retail stores owned and operated by it and located in various States of the United States and in the District of Columbia, and causes said tires and tubes to be shipped and transported to said retail stores from States other than the States in which such stores are located. Respondent causes said tires and tubes when sold to be transported from its various local stores and the points of origin of shipment, to the purchasers thereof located in various States of the United States other than the State from which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said automobile tires and tubes in commerce among and between the States of the United States and in the District of Columbia.

PAR. 3. Respondent sells three grades of automobile tires and tubes through its retail stores, its tires being distinguished generally as follows:

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1. "Davis DeLuxe Safety Grip Tire," which respondent designates as its premium and best grade tire;

2. "Davis DeLuxe Tire," which respondent designates as its first line tire;

3. "Davis Wearwell Tire," which is respondent's cheapest tire.

In the sale and distribution of its said tires, through its retail stores, it is the established custom of respondent to make an allowance to a purchaser of new tires of 10 percent or more of the purchase price of the new tires as a trade-in allowance for old tires. Respondent, from time to time, fixed the sales prices for its various grades of tires for the use of its retail stores.

PAR. 4. For the purpose of inducing and stimulating the sale of its tires and tubes, the respondent, from time to time, conducts sales through its various retail stores. In connection with such sales, the respondent advertises in various newspapers and other periodicals having a general circulation and by catalogues distributed by its retail stores. By means of such advertisements, the respondent falsely represents that its tires and tubes are being sold at various purported discounts and savings from the regular and usual price of such tires and tubes. Advertising copy to be used in connection with such sales is prepared by respondent at its main office in Kansas City, Mo., and is forwarded by respondent to its retail stores and is used by said stores by insertion in local newspapers and other advertising media.

PAR. 5. Among and typical of the false, misleading, and deceptive representations contained in the various advertisements disseminated as aforesaid, is the following:

20% DISCOUNT
Off Our Regular Low Prices!
Davis DeLuxe Tires.

Tire Size	List Price	Reg. Price 1st	Sale Price 1st
	Most 1st Quality Well Known Tires	Quality Davis DeLuxe	Quality Davis DeLuxe
4. 50-21 -----	\$11. 10	\$7. 55	\$6. 04*
4. 75-19 -----	11. 45	7. 80	6. 24*
5. 00-19 -----	12. 50	8. 40	6. 72*
5. 25-17 -----	12. 90	8. 65	6. 92*
5. 50-17 -----	14. 65	9. 80	7. 84*
6. 00-16 -----	15. 95	11. 05	8. 84*
6. 50-16 -----	19. 35	13. 55	10. 84*

All Other Sizes—Similar Savings

*Includes trade-in of old tire.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent represents that by paying the sales prices indicated in

said advertisement for any particular sized tire, a saving or discount of 20 percent is provided, based upon the regular sales price of said tire. In truth and in fact, such saving or discount is greatly exaggerated and untrue for the reason that the listed "Regular Price" makes no allowance whatsoever for the trade-in value of purchaser's old tires, which by the terms of said advertisement are required to be turned in at the time of said sale and purchase. Giving effect to the minimum trade-in allowance of 10 percent for used tires, the saving or discount is approximately 11 percent rather than 20 percent as advertised.

PAR. 6. Another and typical example of the false, misleading, and deceptive representations contained in the various advertisements disseminated as aforesaid, is the following:

FREE TUBE with every Davis DeLuxe. Plus: Low, Money-Saving Prices! Plus: Liberal Trade-In for Old Tires! Plus: Genuine First-Line Quality! Strictly FIRST-Line, FIRST Quality—BUILT SOLD and GUARANTEED as such!—yet we not only offer you Davis DeLuxe at about the regular price of most THIRD or FOURTH Line well-known tires—but (during this sale) will give you a fresh, new Davis tube for each new tire—and will make a liberal trade in allowance for your old tires. CHECK SAVINGS YOURSELF.

Then follows list of tire sizes and prices of which the following is an example:

Size	Published List Prices Most Nationally-Advertised First Line Tires (Plus Tubes)	Davis DeLuxe with Free Davis Tube
6.00-16	(15.95 plus 2.85) 18.80	\$9.95*

*Includes trade-in of average tires. If yours are worth more, your cost on Davis DeLuxe may be even lower.

By means of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent represents that in the purchase of a Davis DeLuxe Tire during said sale, the purchaser receives a Davis tube free and saves the difference between the advertised sale price for tire and tube and the listed price for nationally advertised tire and tube. In truth and in fact such savings are exaggerated and untrue for the reason that the advertised price for respondent's tire and tube makes an allowance of 10 percent for purchaser's old tires, while the listed price for nationally advertised tire and tube makes no such allowance, although it is customary and usual for dealers selling nationally advertised tires to make an allowance of at least 10 percent as the trade-in value for purchaser's old tires. Taking tire size 6.00-16 as an example, the listed price of nationally advertised, first-line tire plus tube is \$18.80, and the advertised selling price of respondent's Davis DeLuxe Tire and free tube is \$9.95, indicating a saving of \$8.85 to the purchaser.

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However, giving effect to the minimum allowance of 10 percent for trade-in value of old tires allowed to purchasers of nationally advertised tires, which in size 6.00-16 would be \$1.59, the actual saving would be \$7.26, rather than \$8.85 as advertised. The advertised savings are further exaggerated in that the quoted prices of nationally advertised tires are the list prices rather than the actual selling prices, such selling prices being usually less than the list prices without regard to the trade-in value of old tires.

PAR. 7. In addition to the acts and practices hereinabove described, the respondent falsely represents the discount or saving at which its tires are sold by the use of fictitious list prices. As an example of this practice, the respondent, in connection with special sales of its tires, causes advertisements to be inserted in various newspapers, by which advertisements respondent represents that certain prices set out in such advertisements are the list prices of its tires in effect at the time of such sales, and further represents that certain definite savings are afforded purchasers of said tires at such sales, based upon the difference between the represented list prices and the special sales prices. In truth and in fact, such alleged savings are exaggerated and untrue for the reason that the stated list prices are fictitious, and are not the list prices usually and customarily charged by the respondent at or about the time of such sales.

PAR. 8. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations and advertisements disseminated as aforesaid with respect to the sales prices of its automobile tires and tubes, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and that respondent's tires and tubes are sold at the saving or discount advertised, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's automobile tires and tubes.

PAR. 9. 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 11th day of March 1940, issued and thereafter served its complaint in this proceeding upon said respondent, Western Auto Supply Co., charging it with the use of

unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and W. T. Kelley, Chief Counsel for 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 the 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 presentation of argument, the filing of briefs or the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved accepted and filed, and the Commission having duly considered the same and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Western Auto Supply Co., is a corporation organized and existing under the laws of the State of Missouri, with its principal office and place of business located at 2107 Grand Avenue in the city of Kansas City, State of Missouri.

PAR. 2. Respondent is now, and for many years last past has been, engaged in the sale and distribution, among other products, of automobile tires and tubes.

In the course and conduct of its business, the respondent sells and distributes said automobile tires and tubes to the purchasing public through and by means of various retail stores owned and operated by it and located in various States of the United States and in the District of Columbia, and causes said tires and tubes to be shipped and transported to said retail stores from States other than the States in which such stores are located. Respondent causes said tires and tubes when sold to be transported from its various local stores and the points of origin of shipment to the purchasers thereof located in various States of the United States other than the State from which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said automobile tires and tubes in commerce among and between the States of the United States and in the District of Columbia.

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PAR. 3. The respondent sells several grades of automobile tires and tubes which, at the time mentioned herein, were distinguished as follows:

1. "Davis DeLuxe Safety Grip Tire," which respondent designates as its premium and best grade tire;

2. "Davis DeLuxe Tire," which respondent designates as its first line tire;

3. "Davis Wearwell Tire," which is respondent's cheapest tire.

The respondent issues price lists for the use of its various retail stores which price lists, without additional explanation, might be understood as designating the retail selling price of its various grades of tires. The retail stores do not usually sell respondent's tires at the prices so designated but at lesser prices, such lesser prices being brought about by means of discounts from list prices and by allowances for old tires turned in by purchasers at the time of purchase of new tires. This trade-in allowance is equal to 10 percent or more of the list price of the new tires purchased. In advertising to the purchasing public since March 21, 1938, respondent has sometimes represented that its tires are being offered for sale at certain discounts and savings from the list prices above referred to.

The Commission finds that substantial portion of the purchasing public understands and believes that advertising savings or discounts are reductions from the regular retail sale prices charged for the same merchandise in the ordinary course of business immediately prior in point of time to such advertised sale; that they understand and believe that "list prices" as used by respondent's retail stores in advertising respondent's tires referred to and meant the regular retail sale prices of the tires advertised for sale, and that any represented savings or discounts from such "list prices" were reductions from the regular retail sale prices of the same tires in effect immediately prior in point of time to such advertised sale.

PAR. 4. For the purpose of inducing and stimulating the sale of its tires and tubes, the respondent, since March 21, 1938, has conducted sales through its various retail stores. In connection with such sales, the respondent advertised in various newspapers and other periodicals having a general circulation and by catalogs distributed by its retail stores. By means of such advertisements, the respondent has represented, since March 21, 1938, that its tires and tubes were being sold at various purported discounts and savings from the regular and usual price of such tires and tubes. Advertising copy to be used in connection with such sales was prepared by respondent at its main office in Kansas City, Mo., and forwarded by the respondent

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to its retail stores and was used by said stores by insertion in local newspapers and other advertising media.

PAR. 5. Among and typical of such representations contained in the various advertisements, disseminated as aforesaid, is the following:

20% DISCOUNT
Off Our Regular Low Prices!
Davis DeLuxe Tires.

Tire Size	List Price Most 1st Quality Well Known Tires	Reg. Price 1st Quality Davis DeLuxe	Sale Price 1st Quality Davis DeLuxe
4.50-21.....	\$11.10	\$7.55	\$6.04*
4.75-19.....	11.45	7.80	6.24*
5.00-19.....	12.50	8.40	6.72*
5.25-17.....	12.90	8.65	6.92*
5.50-17.....	14.65	9.80	7.84*
6.00-16.....	15.95	11.05	8.84*
6.50-16.....	19.35	13.55	10.84*

*Includes trade-in of old tire.

All other sizes—Similar Savings.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent represents that by paying the sales prices indicated in said advertisement for any particular sized tire, a saving or discount of 20 percent is provided, based upon the regular sales price of said tire. In truth and in fact, such represented saving or discount is greatly exaggerated and untrue for the reason that the listed "Regular Price" makes no allowance whatsoever for the trade-in value of purchaser's old tires, which by the terms of said advertisement are required to be turned in at the time of said sale and purchase. Giving effect to the minimum trade-in allowance of 10 percent for used tires, the saving or discount is approximately 11 percent rather than 20 percent as advertised. The savings are further exaggerated by reason of the fact that the prices designated as "Regular Price" are actually the list price in effect at the time of said advertisement, and are therefore not the prices customarily charged for the tires in the usual course of business.

PAR. 6. Another typical example of such representations is the following:

FREE TUBE with every Davis DeLuxe. Plus: Low, Money-Saving Prices! Plus: Liberal Trade-In for Old Tires! Plus: Genuine First-Line Quality! Strictly FIRST-Line, FIRST Quality—BUILT SOLD and GUARANTEED as such!—yet we not only offer you Davis DeLuxe at about the regular price of most THIRD or FOURTH Line well-known tires—but (during this sale) will give you a fresh,

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new Davis tube for each new tire—and will make a liberal trade in allowance for your old tires. CHECK SAVINGS YOURSELF.

Then follows list of tire sizes and prices, of which the following is an example:

Size	Published List Prices Most Nationally-Advertised First Line Tires (Plus Tubes)	Davis DeLuxe with Free Davis Tube
6.00-16	(15.95 plus 2.85) 18.80	\$9.95*

*Includes trade-in of average tires. If yours are worth more, your cost on Davis DeLuxe may be even lower.

By means of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent represents that in the purchase of a Davis DeLuxe Tire during said sale, the purchaser receives a Davis tube free and saves the difference between the advertised sale price for tire and tube and the listed price for nationally advertised tire and tube. In truth and in fact, such savings are exaggerated and untrue for the reason that the advertised price for respondent's tire and tube makes an allowance of 10 percent for purchaser's old tires, while the listed price for nationally advertised tire and tube makes no such allowance, although it is customary and usual for dealers selling nationally advertised tires to make an allowance of at least 10 percent as the trade-in value for purchaser's old tires. Taking tire size 6.00-16 as an example, the listed price of nationally advertised, first line tire plus tube is \$18.80, and the advertised selling price of respondent's Davis DeLuxe Tire and free tube is \$9.95, indicating a saving of \$8.85 to the purchaser. However, giving effect to the minimum allowance of 10 percent for trade-in value of old tires allowed to purchasers of nationally advertised tires, which in size 6.00-16 would be \$1.59, the actual saving would be \$7.26, rather than \$8.85 as advertised. The advertised savings are further exaggerated in that the quoted prices of nationally advertised tires are the list prices rather than the selling prices, such selling prices being usually less than the list prices without regard to the trade-in value of old tires.

PAR. 7. The use by the respondent of the foregoing misleading and deceptive statements, representations, and advertisements disseminated as aforesaid with respect to the sales prices of its automobile tires and tubes has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and that respondent's tires and tubes are sold at the saving or discount advertised, and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's automobile tires and tubes.

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 and a stipulation as to the facts entered into between the respondent 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, Western Auto Supply 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 automobile tires and tubes to the general public in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "List Price" or any other term of similar import or meaning to designate, describe or refer to prices which are not, in fact, bona-fide regularly established selling prices of the tires or tubes advertised and offered for sale, as established by the usual and customary sales in the normal course of business.

2. Representing, directly or indirectly, that any specific amount is the customary, regular or usual price of any tire or tube advertised and offered for sale when such amount is not, in fact, the bona-fide actual selling price of such tire or such tube as established by the usual and customary sales in the normal course of business.

3. Representing, directly or indirectly, any specified amounts or percentages as savings or discounts which are not actual savings or discounts computed upon the bona-fide usual and customary selling prices for such tires or such tubes in effect immediately prior in point of time to such representation.

4. Representing, directly or indirectly, that any savings or discounts are afforded a purchaser upon the purchase of its tires or tubes when such savings or discounts are computed upon prices of

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competitors' tires or tubes, unless the prices of respondent's tires or tubes and also those of its competitors' are the regular current retail selling prices.

5. Representing, directly or indirectly, that certain amounts are the prices of respondent's competitors' tires or tubes unless such amounts are the prices at which such competitors sell their tires or tubes in the ordinary and usual course of business.

6. Representing, directly or indirectly, that specific savings or discounts are afforded a purchaser upon the purchase of tires or tubes when such savings or discounts do not take into account the trade-in allowances usually and customarily made to purchasers in the sale of such tires or such tubes in the ordinary course of business.

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

PELICAN STATE CANDY COMPANY, AND MAX J. PINSKI,
INDIVIDUALLY AND AS OFFICER THEREOF, AND
FORMERLY INDIVIDUALLY AND TRADING AS
PELICAN STATE CANDY COMPANY AND ROYAL
CHOCOLATES

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

Docket, 4210. Complaint, July 31, 1940—Decision, June 18, 1941

Where a corporation and an individual, who was its president and principal stockholder and formulated, controlled, and directed its policies and practices, engaged in the manufacture of candy and the competitive interstate sale and distribution of assortments thereof which were so packed or assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers, typical assortments consisting of (1) a number of quarter, half, and one pound bars of pecan candy, value of each of which was in excess of 5 cents, for sale and distribution under a plan, as explained on punchboard supplied, by which purchasers of chances pushing certain numbers received a quarter- or half-pound bar, those pushing the last number in each of the four sections into which the board was divided received a pound of such candy, and others received for nickel paid nothing other than the privilege of making a punch; and (2) a package of candy, together with a push card for use in sale thereof, as thereon explained, under a plan by which the person selecting from 35 feminine names displayed on the card, the one corresponding to that concealed under the master seal received the candy, value of which was in excess of chance amount paid as determined by the particular number disclosed in the disk beneath the name selected—

Sold such assortments to wholesalers, jobbers, and, directly or indirectly, to retailers, by whom they were exposed and sold to the purchasing public, and thereby supplied to and placed in the hands of others a means of conducting lotteries in the sale of their products in accordance with said sales plans, involving game of chance or sale of chance to procure candy at prices much less than normal retail price thereof, contrary to an established public policy of the United States Government, and in competition with many who, unwilling to use such methods of chance or any other method contrary to public policy, refrain therefrom;

With result that many persons were attracted by said sales plans and by the element of chance involved therein, and were thereby induced to buy and sell said candy in preference to that of aforesaid competitors, and with tendency and capacity unfairly to divert trade in commerce from such competitors:

Held, That such acts and practices, as above 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.