

Syllabus

33 F. T. C.

IN THE MATTER OF
AJAX TIRE & RUBBER CORPORATION

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

Docket 3943. Complaint, Nov. 6, 1939—Decision, Aug. 12, 1941

Where a corporation engaged in interstate sale and distribution of its "Ajax" automobile tires and tubes; in dealing with the matter of plies in its tires, as to which there is an established manufacturers' practice, familiar to the purchasing public which necessarily relies thereon, of indicating on the side walls and wrappings of tires the number of plies contained therein; by means of letters, blotters, signs, price lists, and other advertising matter circulated among dealers—

- (a) Represented that its tires were six-ply and eight-ply construction, respectively, through such typical statements as "Silent 6 Six—Silent 8 Eight" and "Cleated 6 Six—Cleated 8 Eight," "Ajax—The World's Premier Tire—Since 1904," and "The World's Premier Tires for over 34 years," through means aforesaid and through placing on the side walls and wrappings of said tires marks, brands, numbers, and insignia which purported to represent that six and eight plies, respectively, were used in their construction; facts being its said products contained less than six and eight plies, respectively;
- (b) Represented that it had been selling tires and tubes since 1904, facts being that, while its predecessors sold such products from 1904 to 1934, it did not sell or distribute them prior to 1934; and
- (c) Represented that certain designated amounts were the retail prices of its products, when in fact they were in excess of the prices at which such tires and tubes were customarily sold by retailers, and thereby placed in the hands of dealers means of deceiving members of the purchasing public as to the regular retail prices;

With the result, notwithstanding fact it neither owned nor controlled any retail outlets and disseminated no advertising which reached the consumer directly from it, and the passing of its products through varying multiple channels before reaching the ultimate consumer, that use of such practices had the capacity and tendency to and did mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with result that the purchasing public bought substantial quantities of its said products:

Held, That such acts and practices, under the circumstances set forth, constituted unfair and deceptive acts and practices in commerce.

Mr. B. G. Wilson for the Commission.

Levien, Singer & Neuburger, of New York City, 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 Ajax Tire & Rubber Corporation, a corporation, 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, Ajax Tire & Rubber Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 601 West Twenty-sixth Street, New York, N. Y. The respondent is now, and has been for some time last past, engaged in the business of selling and distributing automobile tires and tubes designated "Ajax" in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused its said products, when sold, to be shipped or transported from its place of business in the State of New York to the purchasers thereof 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 automobile tires and tubes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The number of plies in tires is an important factor in determining the durability and value thereof. There is among manufacturers of automobile tires an established custom and practice of placing on the side walls of tires and on the wrappings of such tires figures and marks indicating the number of plies contained in such tires. The purchasing public is familiar with such practice and relies upon such figures and marks in purchasing tires and in fact has no other way of knowing the actual number of plies contained in said tires other than as revealed in the manufacturers' representations so stamped on the tires themselves and the wrappings thereof.

PAR. 3. In the course and conduct of its business, and for the purpose of inducing the purchase of its said automobile tires and tubes, respondent has made many false and misleading representations concerning the character, quality and prices of said products by means of letters, blotters, signs, price lists and other printed and written matter circulated generally among dealers. Among and

Complaint

33 F. T. C.

typical of the false and misleading representations so used and disseminated as aforesaid are the following:

Silent 6 Six—Silent 8 Eight and

Cleated 6 Six—Cleated 8 Eight

Ajax—The World's Premier Tire—Since 1904.

The World's Premier Tires for over 34 years.

Respondent has also caused to be placed on the wrappings enclosing its said tires and on the side walls of said tires marks, brands, numbers, and insignia which purport to represent and indicate that six and eight plies respectively are used in the construction of such tires.

Through the use of the aforesaid statements and practices the respondent represents that its tires are of six ply construction and eight ply construction, respectively, and that its tires and tubes have been on the market since 1904.

PAR. 4. The foregoing representations are false, misleading, and untrue. In truth and in fact, such tires do not contain six plies and eight plies, respectively, but contain substantially smaller number of plies. Respondent's tires and tubes have not been on the market since 1904. It was not until 1934 that respondent was organized and began the sale and distribution of said tires and tubes.

PAR. 5. Respondent also represents, by means of fictitious price lists and other advertising material, that the value and retail price of its tires and tubes are much greater than is actually the fact. In truth and in fact, the purported prices set forth in such price lists and advertising material do not represent the actual retail prices of such tires and tubes but are fictitious prices and are greatly in excess of the retail prices at which such tires and tubes are customarily sold by retail dealers in the normal course of business.

By this practice respondent has placed in the hands of unscrupulous dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public as to the regular value and retail price of said tires and tubes.

PAR. 6. The use by respondent of the practices set forth herein has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and into the purchase of substantial quantities of respondent's tires and tubes as a result of such erroneous belief.

PAR. 7. The aforesaid acts and practices of 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 6th day of November 1939, issued and thereafter served its complaint in this proceeding upon respondent, Ajax Tire & Rubber Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 27th day of November 1939, the respondent filed its 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 Levien, Singer and Neuburger, counsel for respondent, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might 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 Commission might 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. Counsel for the respondent expressly waived the filing of the report upon the evidence by the trial examiner. 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, Ajax Tire & Rubber Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 601 West Twenty-sixth Street, New York, N. Y. The respondent is now, and has been for some time last past, engaged in the business of selling and distributing automobile tires and tubes designated "Ajax" in commerce between and among the various States of the United States and in the District of Columbia.

Respondent causes and has caused its said products, when sold, to be shipped or transported from its place of business in the State of New York to the purchasers thereof located in various other States

Findings

33 F. T. C.

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 automobile tires and tubes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, and for the purpose of inducing the purchase of its said automobile tires and tubes, respondent has made many representations concerning the character, quality, and prices of said products by means of letters, blotters, signs, price lists, and other printed and written matter circulated generally among dealers. Among and typical of the representations so used and disseminated as aforesaid are the following:

Silent 6 Six—Silent 8 Eight and

Cleated 6 Six—Cleated 8 Eight

Ajax—The World's Premier Tire—Since 1904.

The World's Premier Tires for over 34 years.

Respondent has also caused to be placed on the wrappings enclosing its said tires and on the side walls of said tires marks, brands, numbers, and insignia which purport to represent and indicate that six and eight plies, respectively, are used in the construction of such tires.

Through the use of the aforesaid statements and practices the respondent represents or implies that its tires are of six-ply construction and eight-ply construction, respectively, and that the respondent has been selling tires and tubes on the market since 1904.

PAR. 3. The number of plies in tires is an important factor in determining the durability and value thereof. There is among manufacturers of automobile tires an established custom and practice of placing on the side walls of tires and on the wrappings of such tires, figures and marks indicating the number of plies contained in such tires. The purchasing public is familiar with such practice and relies upon such figures and marks in purchasing tires, and in fact has no other way of knowing the actual number of plies contained in said tires other than as revealed in the manufacturers' representations so stamped on the tires themselves and the wrappings thereof.

PAR. 4. In truth and in fact respondent's tires do not contain six plies and eight plies, respectively, but contain a lesser number of plies. Respondent has not been selling tires and tubes on the market since 1904. Ajax tires and tubes were sold by respondent's predecessors from 1904 to 1934. Respondent prior to 1934, did not sell or distribute Ajax tires and tubes.

PAR. 5. Respondent, in marketing its tires and tubes issues price lists and other advertising material to its distributors by means of which it represents that certain designated amounts are the retail prices of its tires and tubes. In truth and in fact, the purported prices set forth in such price lists and advertising material do not represent the actual retail prices of such tires and tubes but are prices in excess of the retail prices at which such tires and tubes are customarily sold by retail dealers in the normal course of business.

By this practice respondent has placed in the hands of dealers a means and instrumentality whereby certain dealers are enabled to mislead and deceive members of the purchasing public as to the regular retail price of said tires and tubes.

PAR. 6. Although respondent neither owns nor controls any retail outlets and does not disseminate any advertising which reaches the consumer directly from the respondent and its products pass through varying multiple channels before reaching the ultimate consumer, the use by respondent of the practices set forth in paragraphs 2 and 5 hereof, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and as a result of such erroneous belief the purchasing public has purchased substantial quantities of respondent's tires and tubes.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, 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 Levien, Singer and Neuburger, counsel for the respondent, and W. T. Kelly, 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 its findings as to the facts and conclusion based thereon and an order disposing of this proceeding, 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, Ajax Tire & Rubber Corporation, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, by means of words, brands, markings, numbers, or insignia placed on its automobile tires or on the tire wrappings, or in any other manner, that the tires offered for sale or sold by respondent contain more plies in their construction than is actually the fact.

2. Representing, directly or indirectly, that any specified amounts are the retail selling prices of its automobile tires and tubes when such amounts are not, in fact, the bona fide actual selling prices of such tires and tubes as established by the usual and customary retail sales in the normal course of business.

3. Furnishing price lists and advertising material to its dealers, in which certain amounts are designated as the retail prices of its automobile tires and tubes, unless such amounts are the bona fide regular established retail selling prices of such tires and tubes, as established by the usual and customary retail sales of dealers in the normal 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.

Complaint

IN THE MATTER OF

LAMBERT AGIN, TRADING AS JACKS CHEMICAL
COMPANY AND JACQUE CHEMICAL COMPANY

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

Docket 4247. Complaint, Aug. 20, 1940—Decision, Aug. 12, 1941

Where an individual engaged in interstate sale and distribution of his "Jacks" or "Jacque" medicinal preparation; by means of advertisements disseminated through the mails, in newspapers and periodicals, and other advertising literature—

Represented that his said preparation constituted a cure or remedy for gall, kidney, and bladder stones, diabetes, rheumatism, swollen limbs, hives, excess acid and excess uric acid, and possessed substantial therapeutic value in the treatment thereof, facts being it was nothing more than a dilute aqueous solution of nitric, hydrochloric, and acetic acids of an approximate 10 percent strength, and was wholly incapable of effecting any of the results claimed for it as above set forth;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that aforesaid representations were true, and with result that substantial quantities of his said product were purchased in reliance upon such belief:

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

Before Mr. J. A. Purcell, trial examiner.

Mr. Jay L. Jackson for the Commission.

Mr. H. C. Beckner, of Cincinnati, Ohio, 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 Lambert Agin, an individual, trading as Jacks Chemical Co. and as Jacque Chemical Co., 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, Lambert Agin, is an individual trading under the name and style of Jacks Chemical Co. and Jacque Chemical Co., with his office and principal place of business located at Pleasant Ridge Station, in the city of Cincinnati, State of Ohio. Said respondent is now, and for more than 2 years last past has been, en-