

IN THE MATTER OF
INTERNATIONAL PARTS CORPORATION

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

Docket 4513. Complaint, May 29, 1941—Decision, Mar. 9, 1942

Where a corporation, engaged in competitive interstate sale and distribution of replacement automobile mufflers—

- (a) Represented, directly or by implication, that the occupant of an automobile equipped with a muffler, the seams of which were spot-welded, locked or crimped, was in danger of injury from carbon monoxide gas as a result of leakage of exhaust gas, and that such danger was avoided through the use of a muffler with continuous electric-welded seams, through such statements on cartons and tags attached to its said product (together with a depiction of a police officer) as "WARNING! To Protect Yourself Against Leaking Carbon Monoxide Gas Be Sure Your Muffler is Made With Continuous ELECTRIC-WELDED SEAMS Throughout * * * Not Locked, Crimped or Spot-Welded—Your Safeguard is An INTERNATIONAL";
- The facts being that in the customary operation of an automobile there is little or no danger of such poisoning as a result of such leakage, regardless of how its muffler seams are closed; and its said products in such respect had no practical advantage over other types, some of which in fact were equipped with small drainage holes; and
- (b) Represented that the finish on its mufflers afforded permanent protection against rust or corrosion, through use of statement "Finest Quality Metallic Finish Prevents Rust and Corrosion" in advertising circulars;

The facts being that while the finish used thereon, consisting of powdered metal suspended in a varnish-like binder, might prevent rust and corrosion for a limited time, it did not afford permanent protection, as implied;

With tendency and capacity to mislead and deceive a substantial portion of purchasing public into the belief that there was substantial danger of injury from use of mufflers with locked, crimped or spot-welded seams, and that by use of muffler here in question such danger was removed; and that finish on said mufflers afforded protection against rust and corrosion; whereby such public was induced to purchase its products, and trade was diverted unfairly to it from competitors:

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Donovan Divet for the Commission.

Jacobson, Merrick, Nierman & Silbert, of Chicago, Ill., 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 International Parts Corporation, a corporation, 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, International Parts Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its office and principal place of business at 1814 South Michigan Avenue, Chicago, Ill.

PAR. 2. The respondent is now and for more than two years last past has been engaged in the sale and distribution of replacement mufflers for use on automobiles. The respondent sells its products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said products, when sold, to be transported from its said place of business in the city of Chicago, State of Illinois, to purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains, and at all times mentioned herein, has maintained, a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

Various corporations, associations, partnerships and persons who do not engage in the methods used by the respondent, as hereinafter alleged, are engaged, and at all times herein mentioned, have been engaged, in offering for sale and selling both new and replacement mufflers, including locked-seam, crimped, and spot-welded mufflers, in commerce among and between the several States of the United States and in the District of Columbia. Respondent, in the course and conduct of its said business, is in substantial competition with such corporations, associations, partnerships and persons so engaged in offering for sale and selling said products in said commerce.

PAR. 3. In the course and conduct of its said business in said commerce, for the purpose of promoting the sale of its said products, the respondent for more than two years last past, has engaged in the practice of making false representations as to the merits of its said mufflers. Said false representations are, and have been, made by means of statements inserted in catalogs, pamphlets, circulars and other printed matter distributed among customers and prospective customers.

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PAR. 4. Among the false and misleading representations so made and distributed concerning respondent's said replacement mufflers are the following:

Electric welded seams throughout—not locked, crimped or spot-welded.

Double shell construction for added strength and quiet operation, exclusive feature.

Finest quality metallic finish prevents rust and corrosion.

They increase gas mileage.

Warning! To protect yourself against leaking carbon monoxide gas, be sure your muffler is made with continuous electric-welded seams throughout, not locked, crimped or spot-welded.

As a part of the advertising material used and distributed by respondent, the respondent displays a cross-section representation of one of its said mufflers, in which said representation a cross-section of a baffle plate in said muffler appears. Said representation of said baffle plate is connected by an arrow pointing to said baffle plate with the following words: "New engineering achievement."

By the use of said advertisements, representations, picturizations and others of similar import and meaning not herein specifically set forth and described, the respondent represents that its said mufflers are not spot-welded; that the baffle plates in its said mufflers are a new engineering achievement; that by reason of the double shell construction of respondent's said mufflers, said mufflers are more efficient than those offered for sale by other manufacturers and vendors of mufflers; that respondent's said mufflers are coated with a metallic finish which permanently prevents rust and corrosion; that the use of respondent's said mufflers gives increased gas mileage; that the occupant of a car equipped with a locked-seam, crimped or spot-welded muffler is in danger of injury from carbon monoxide gas through leakage of exhaust gases through the seam.

PAR. 5. The aforesaid representations are false and misleading. In truth and in fact respondent's mufflers are spot-welded; the baffle plates used in respondent's said mufflers are not a new engineering achievement; the double shelled feature of respondent's said mufflers is not exclusive but has long been used by other persons and companies selling mufflers and the said double shelled feature of respondent's said mufflers does not render them more efficient than mufflers ordinarily offered for sale by some of respondent's said competitors; the finish used on respondent's said mufflers will not prevent rust and corrosion permanently; the use of respondent's said mufflers does not result in increased gas mileage; the occupants of a car equipped with a locked-seam, crimped or spot-welded muffler are in no danger from carbon monoxide gas escaping from openings of the

seam in the muffler for such methods of manufacture produce seams equally as effective as the method used by respondent in preventing the escape of exhaust gases; furthermore, the escape of exhaust gases through a defect in the seam of the muffler on a car would not place the occupants thereof in danger of injury from carbon monoxide gas.

PAR. 6. The use by the respondent of the aforesaid representations has had and now has the tendency and capacity to mislead and has misled purchasers and prospective purchasers thereof, into the erroneous and mistaken belief that said representations are true, and to induce them to purchase substantial quantities of respondent's said products, and unfairly to divert trade in said commerce to respondent from its said competitors to the injury of said competitors and of the public.

PAR. 7. 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, and unfair methods of competition 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 29th day of May, 1941, issued and thereafter served its complaint in this proceeding upon the respondent, International Parts Corporation, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Donovan Divet, attorney for the Commission, and in opposition to the allegations of the complaint by Jacobson, Merrick, Nierman & Silbert, attorneys for the respondent, before Randolph Preston, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the respondent's answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of the complaint and in opposition thereto, and oral argument; and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in

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the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, International Parts Corporation, is a corporation organized and existing under the laws of the State of Illinois, with its office and principal place of business located at 1814 South Michigan Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for some four years last past has been, engaged in the sale and distribution of replacement mufflers for use on automobiles. Respondent sells its products to dealers and members of the purchasing public, and causes its products, when sold, to be transported from its place of business in the State of Illinois to 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 its products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business the respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution, in commerce among and between the various States of the United States and in the District of Columbia, of both new and replacement mufflers for automobiles.

PAR. 4. The respondent, in the course and conduct of its business, and for the purpose of promoting the sale of its mufflers, has advertised such mufflers in various ways, including the use of labels which are affixed to the cartons in which the mufflers are displayed and offered for sale to the public, and tags which are attached to the mufflers themselves. On these labels and tags appears a picturization of a police officer, together with the following legend:

WARNING!**To Protect Yourself****Against****Leaking Carbon****Monoxide Gas****Be Sure****Your Muffler****Is Made With****Continuous****ELECTRIC-WELDED SEAMS****Throughout***** * * Not Locked, Crimped or Spot-Welded****Your****Safeguard INTERNATIONAL****is An**

PAR. 5. Through the use of these representations and others of a similar nature the respondent represents, directly or by implication, that the occupant of an automobile equipped with a muffler the seams of which are spot-welded, locked or crimped, is in danger of injury from carbon monoxide gas as a result of the leakage of exhaust gases through the seams of the muffler, and that this danger is avoided through the use of a muffler which has continuous electric-welded seams.

PAR. 6. A continuous electric weld of metallic material is usually made by a continuous process, with no break either in the operation of the welding machine or in the weld itself. A spot weld, as the term implies, is one in which the material is welded in spots only. The mufflers sold by respondent are manufactured for it by another concern, and the welding of the seams of the mufflers is done through the use of a type of machine which is ordinarily used for spot-welding. Respondent insists, however, that although the welding may be done by means of a spot-welding machine, the result in the case of respondent's mufflers is a continuous electric weld of the entire seam because the spots where the material is welded are made to overlap and the result is a complete welding of the entire seam of the muffler.

Some of respondent's competitors sell mufflers which have continuous electric welded seams throughout. Others sell mufflers which are spot-welded, and still others sell mufflers which are not welded at all but on which the seams are fastened together by means of locking or crimping.

The evidence shows that in the customary and usual operation of an automobile there is little or no danger of carbon monoxide gas poisoning as a result of the leakage of exhaust gases from the muffler, and this is true irrespective of the manner in which the seams of the muffler are closed. No well-made muffler, whether its seams are closed by a continuous electric weld, by spot-welding, or by locking or crimping, is a source of danger insofar as the gases escaping therefrom are concerned. In this respect respondent's mufflers have no practical advantage over mufflers of other types. In fact, certain automobiles are equipped by the manufacturer with mufflers which have small drain holes in the bottom for the purpose of permitting water to drain out of the muffler, and it is not an infrequent occurrence for dealers and users of automobiles to punch small holes in their mufflers for draining purposes. The Commission therefore finds that the representations made by respondent as set forth above are misleading and deceptive, that they assume the presence of a danger which does not in fact exist.

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PAR. 7. In promoting the sale of its mufflers, the respondent also distributes among prospective purchasers certain advertising circulars which contain, among other representations with respect to its mufflers, the following:

Finest Quality Metallic Finish
Prevents Rust and Corrosion.

The finish used for respondent's mufflers is powdered metal which is held or suspended in some kind of binder similar to varnish. While the finish may serve to prevent rust and corrosion for a limited period of time, it does not afford permanent protection against such conditions. The Commission finds that as used by respondent the word "Prevents" implies permanency, and that respondent's representation is therefore misleading to the public.

PAR. 8. The Commission further finds that the use by the respondent of these misleading and deceptive representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the belief that there is substantial danger of injury from the use of mufflers which have locked, crimped or spot-welded seams and that by using respondent's muffler such danger is removed; also that the finish on respondent's mufflers afford permanent protection against rust and corrosion. As a result of the erroneous and mistaken beliefs so engendered by respondent's representations, a substantial portion of the purchasing public has been induced to purchase respondent's products rather than the products of respondent's competitors, and in consequence substantial trade has been diverted to the respondent from its competitors.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Randolph Preston, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence and the exceptions to

such report, briefs in support of the complaint and in opposition thereto, and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act;

It is ordered, That the respondent, International Parts Corporation, a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of respondent's automobile mufflers in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that the use on an automobile of a muffler having seams which are spot-welded, locked or crimped results in greater danger of carbon monoxide gas poisoning to the occupant of such automobile than does the use of a muffler having continuous electric-welded seams;

2. Representing, through the use of the unqualified word "Prevents," or any other unqualified word of similar import, or by any other means, that the finish on respondent's mufflers affords permanent protection against rust or corrosion.

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.

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IN THE MATTER OF

PRATT FOOD COMPANY

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

Docket 4599. Complaint, Sept. 29, 1941—Decision, Mar. 9, 1942

Where a corporation, engaged in interstate sale and distribution of its "Pratt's Inhalant" and "Pratt's Poultry Regulator;" by advertisements in periodicals, circulars, leaflets, pamphlets, and other advertising literature—

- (a) Falsely represented that its said "Inhalant" poultry preparation constituted a competent and effective treatment for colds in fowls, helped prevent serious respiratory diseases in chickens, and was germ killing, antiseptic and healing, preventing serious outbreaks of diseases, and killing germs in the air; and
- (b) Falsely represented that the use of its said "Poultry Regulator" would start hens producing more eggs in fifteen days; when in fact it would not accomplish such result within said or any period of time;

With effect of misleading and deceiving a substantial portion of the purchasing public into mistaken belief that such statements were true, and of inducing it, because of such mistaken belief, to purchase substantial quantities of said products:

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. Maurice C. Pearce for the Commission.

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 Pratt Food Co., a corporation, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Pratt Food Co., is a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 124-130 Walnut Street, Philadelphia. Pa.

PAR. 2. Respondent is now and for more than one year last past has been engaged in the sale and distribution in commerce between and among the various States of the United States and in the District