

Syllabus

IN THE MATTER OF

PENN-LUB OIL PRODUCTS CO.

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

Docket 4524. Complaint, June 26, 1941—Decision, Apr. 13, 1942

Where a corporation, engaged in the interstate sale and distribution of re-claimed motor oils which had the appearance of new, unused oil, and which it sold in the same type of cans used in sale of the new, to wholesalers and retailers for resale—

- (a) Represented that said product was "Pennsylvania Oil" and "100% Pure Paraffin Base" through use of words "Penn-Lub" as part of its corporate name and as brand name on containers of its products, together with such statements thereon as "100% Pure Paraffin Base Motor Oil," "High Flash—High Fire," "Super Heat Resisting Quality," "Will Not Thin Out," "Winter Grades—Free Flowing—Low Cold Test," and "Motor Oil Specially Processed for High Speed Motors;"

The facts being its said product was not, as understood by trade and purchasing public from term "Pennsylvania Oil," made from crude oil produced in the Pennsylvania oil fields, long widely advertised, sold and distributed under various emblems, marks, and brand names in connection with or containing said word or abbreviations thereof, and preferred by a substantial part of public as superior to oil refined from crudes originating in other regions, and did not have a paraffin base, as also preferred by many, but was obtained from crankcase drainings and contained a mixture of oils from various fields in addition to the Pennsylvania region, including those not having a paraffin base; and reclaiming process employed by it did not completely segregate oils originating in other regions from Pennsylvania oils, nor completely separate oils having a paraffin base from those having a nonparaffin base; and

- (b) Advertised, invoiced and marketed its said reclaimed and processed new appearing oil, containered as aforesaid, with no label or marking on cans to indicate or disclose that product in question was old, used oil;

With the result of placing in the hands of unscrupulous or uninformed dealers a means whereby they might mislead and deceive the purchasing public, and with effect of misleading and deceiving a substantial number of wholesalers, retailers and members of the purchasing public into the mistaken belief that aforesaid statements were true, thereby inducing them to purchase said product:

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. Webster Ballinger*, trial examiner.

Mr. Eldon P. Schrup for the Commission.

Mr. Saul G. Schulter, of East Newark, N. J. for respondent.

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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 Penn-Lub Oil Products 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, Penn-Lub Oil Products Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 85 Gotthart Street, Newark, N. J.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of reclaimed motor oils to wholesalers and retail distributors for resale to the public. Respondent causes said product when sold to be transported from its place of business in the State of New Jersey to the purchasers thereof located in the various States of the United States other than the State of New Jersey and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said product so sold and distributed by it 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, in connection with the offering for sale, sale, and distribution of its product, in commerce as herein described, and for the purpose of inducing the purchase thereof, respondent has caused and now causes to be imprinted upon the containers in which its said product is displayed and sold, the following statements and representations:

PENN-LUB
100%
PURE
PARAFFIN
BASE
MOTOR OIL
PENN-LUB OIL PRODUCTS CO.
NEWARK, N. J.
* * *
SUMMER GRADES
HIGH FLASH . HIGH FIRE
SUPER
HEAT RESISTING QUALITY
WILL NOT THIN OUT

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WINTER GRADES
 FREE FLOWING . LOW COLD TEST
 ASSURING
 ECONOMY OF OPERATION
 AND MAXIMUM MILEAGE
 AT ALL TEMPERATURES.
 THE PERFECT OIL FOR ALL CARS

* * *

MOTOR OIL
 SPECIALLY PROCESSED
 FOR HIGH SPEED

MOTORS

* * *

GUARANTEE

We Guarantee This Oil to
 Be Entirely Satisfactory
 Or Your Money Will be
 Refunded.

 PENN-LUB OIL PRODUCTS CO.

NEWARK, N. J.

PAR. 4. Respondent, through the use of the above statements and representations, represents and implies and causes to be represented and implied, to the purchasing public and to wholesalers and retailers purchasing said product for resale to the public, that said product is Pennsylvania oil with 100 percent paraffin base.

The use by the respondent of the brand name "Penn-Lub" and of the words "Penn-Lub" as a part of its corporate name, within themselves, serve as representations that respondent's said product is oil from the Pennsylvania grade oil field.

PAR. 5. Respondent's said statements and representations as afore-said are false, misleading, deceptive and untrue. In truth and in fact, respondent's said product is not oil obtained from the Pennsylvania grade oil field, nor is it made wholly from oil with a 100 percent paraffin base obtained from the Pennsylvania grade crude oil region. The respondent's product is in fact obtained from the drainings of motor crank cases which said drainings contain a mixture of oils previously refined from crude oils coming from various oil fields other than and in addition to the Pennsylvania grade region, including regions producing oils not having a paraffin base. The process by which respondent's product is prepared does not completely segregate the reclaimed oils originating in oil regions other than the Pennsylvania grade region from the reclaimed oil originating in such region, nor does said process completely separate the reclaimed oils having a paraffin base from those having a nonparaffin base.

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The term "Pennsylvania Oil" as used in the petroleum industry and as understood by the trade and the purchasing public means oil made from crude oil produced in the geographical area known as the Pennsylvania oil field. For many years, Pennsylvania lubricating or motor oil has been widely advertised, sold, and distributed under various emblems; marks, and brand names in connection with or containing the word "Pennsylvania" or some abbreviation or derivation thereof calculated to show the quality and source of origin of such oil; and the purchasing public not only has become accustomed to recognizing and accepting such indications of the same, but further, a substantial portion of said public has come to regard such oil as a superior grade of oil to be preferred over oil refined from crude oil originating in other regions. Many members of the purchasing public also prefer motor oils having a paraffin base, irrespective of the place of origin of such oils, to motor oils not having such base.

PAR. 6. Respondent, through the use of the statements and representations hereinabove set forth imports or implies that its said reclaimed and processed motor oil is new and unused oil made from virgin crude oil. The implication that respondent's product is new and unused oil refined from virgin crude oil is also created by the fact that respondent's product, when reclaimed and processed, has the appearance of new unused oil and by the further fact that it is sold in cans of the general size, kind and appearance of those used in the sale of new, unused oil. Said containers bear no label or marking indicating or disclosing that said product is old used oil which has been reclaimed and processed.

The general understanding and belief on the part of dealers and purchasing public, in the absence of information clearly disclosing the contrary, is that motor oil having the appearance of new and unused oil and sold in containers such as are used for new oil is in fact new and unused oil and not used oil which has been reclaimed and processed. There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used oil which has been reclaimed and processed, such preference being due in part to a belief on the part of the public that new unused oil is superior in quality to oil which has been previously used.

In truth and in fact, respondent's said motor oil is not new and unused oil refined from virgin crude oil, but is composed entirely of old used oil from the drainings of motor crankcases which has been reclaimed and processed.

PAR. 7. The respondent's said acts and practices as herein set forth serve also to place in the hands of unscrupulous or uninformed wholesalers and retailers a means and instrumentality whereby in the sale

of respondent's product, such parties may mislead and deceive the purchasing public in the manner and method as herein described.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and claims with respect to its product, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial number of wholesalers, retailers, and members of the purchasing public into the erroneous and mistaken belief that such statements, representations, and claims are true and causes, and has caused, a substantial number of wholesalers, retailers, and the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product.

PAR. 9. The aforesaid acts and practices by 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 June 26, 1941, issued, and on June 27, 1941, served, its complaint in this proceeding upon respondent, Penn-Lub Oil Products Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in 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. Respondent, Penn-Lub Oil Products Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 85 Gotthart Street, Newark, N. J.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of reclaimed motor oils to

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wholesalers and retail distributors for resale to the public. Respondent causes said product when sold to be transported from its place of business in the State of New Jersey to the purchasers thereof located in the various States of the United States other than the State of New Jersey and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said product so sold and distributed by it 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, in connection with the offering for sale, sale, and distribution of its product, in commerce as herein described, and for the purpose of inducing the purchase thereof, respondent has caused and now causes to be imprinted upon the containers in which its said product is displayed and sold, the following statements and representations:

PENN-LUB

100%

PURE

PARAFFIN

BASE

MOTOR OIL

PENN-LUB OIL PRODUCTS CO.

NEWARK, N. J.

* * *

SUMMER GRADES

HIGH FLASH . HIGH FIRE

SUPER

HEAT RESISTING QUALITY

WILL NOT THIN OUT

WINTER GRADES

FREE FLOWING, LOW COLD TEST

ASSURING

ECONOMY OF OPERATION

AND MAXIMUM MILEAGE

AT ALL TEMPERATURES

THE PERFECT OIL FOR ALL CARS

* * *

MOTOR OIL

SPECIALLY PROCESSED

FOR HIGH SPEED

MOTORS

* * *

GUARANTEE

We Guarantee This Oil To
Be Entirely Satisfactory
Or Your Money Will Be
Refunded.

PENN-LUB OIL PRODUCTS CO.

NEWARK, N. J.

PAR. 4. Respondent, through the use of the above statements and representations, represents and implies and causes to be represented and implied, to the purchasing public and to wholesalers and retailers purchasing said product for resale to the public, that said product is Pennsylvania Oil with 100-percent pure paraffin base.

The use by the respondent of the brand name "Penn-Lub" and of the words "Penn-Lub" as a part of its corporate name, within themselves, serve as representations that respondent's said product is oil from the Pennsylvania grade oil field.

PAR. 5. Respondent's said statements and representations as aforesaid are false, misleading, deceptive and untrue. In truth and in fact, respondent's said product is not oil obtained from the Pennsylvania grade oil field, nor is it made wholly from oil with a 100-percent paraffin base obtained from the Pennsylvania grade crude oil region. The respondent's product is in fact obtained from the drainings of motor crank cases which said drainings contain a mixture of oils previously refined from crude oils coming from various oil fields other than and in addition to the Pennsylvania grade region, including regions producing oils not having a paraffin base. The process by which respondent's product is prepared does not completely segregate the reclaimed oils originating in oil regions other than the Pennsylvania grade region from the reclaimed oil originating in such region, nor does said process completely separate the reclaimed oils having a paraffin base from those having a nonparaffin base.

The term "Pennsylvania Oil" as used in the petroleum industry and as understood by the trade and the purchasing public means oil made from crude oil produced in the geographical area known as the Pennsylvania oil field. For many years, Pennsylvania lubricating or motor oil has been widely advertised, sold and distributed under various emblems, marks, and brand names in connection with or containing the word "Pennsylvania" or some abbreviation or derivation thereof calculated to show the quality and source of origin of such oil; and the purchasing public not only has become accustomed to recognizing and accepting such indications of the same, but further, a substantial portion of said public has come to regard such oil as a superior grade of oil to be preferred over oil refined from crude oil originating in other regions. Many members of the purchasing public also prefer motor oils having a paraffin base, irrespective of the place of origin of such oils, to motor oils not having such base.

PAR. 6. Respondent, through the use of the statements and representations hereinabove set forth imports or implies that its said re-

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claimed and processed motor oil is new and unused oil made from virgin crude oil. The implication that respondent's product is new and unused oil refined from virgin crude oil is also created by the fact that respondent's product, when reclaimed and processed, has the appearance of new unused oil and by the further fact that it is sold in cans of the general size, kind and appearance of those used in the sale of new, unused oil. Said containers bear no label or marking indicating or disclosing that said product is old used oil which has been reclaimed and processed.

The general understanding and belief on the part of dealers and purchasing public, in the absence of information clearly disclosing the contrary, is that motor oil having the appearance of new and unused oil and sold in containers such as are used for new oil is in fact new and unused oil and not used oil which has been reclaimed and processed. There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used oil which has been reclaimed and processed, such preference being due in part to a belief on the part of the public that new unused oil is superior in quality to oil which has been previously used.

In truth and in fact, respondent's said motor oil is not new and unused oil refined from virgin crude oil, but is composed entirely of old used oil from the drainings of motor crankcases which has been reclaimed and processed.

PAR. 7. The respondent's said acts and practices as herein set forth serve also to place in the hands of unscrupulous or uninformed wholesalers and retailers a means and instrumentality whereby in the sale of respondent's product, such parties may mislead and deceive the purchasing public in the manner and method as herein described.

PAR. 8. The use by the respondent of the foregoing false, deceptive and misleading statements, representations and claims with respect to its product, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial number of wholesalers, retailers and members of the purchasing public into the erroneous and mistaken belief that such statements, representations and claims are true and causes, and has caused, a substantial number of wholesalers, retailers, and the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product.

CONCLUSION

The acts and practices of respondent, as herein found, are all to the injury and prejudice of the public and constitute unfair and

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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 the substitute answer of respondent, in which substitute answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, 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, Penn-Lub Oil Products 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 oil or oil products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the term "Penn-Lub," or the word "Pennsylvania," or any abbreviation or colorable simulation thereof, including an outline map or other symbol designating Pennsylvania, in or as a part of any trade name for, or to otherwise designate, describe, or refer to, any oil or oil product not composed wholly of oil from the Pennsylvania grade oil fields: Provided, this shall not prevent the use of such words, terms, or symbols to describe or refer to the proportion of oil in any such product derived from Pennsylvania grade oil fields if there are used in immediate connection and conjunction therewith words and figures of at least equal size and conspicuousness truthfully designating the percentage of oil in such product actually derived from Pennsylvania grade oil fields.

2. Using the words "Penn-Lub" in or as a part of any corporate name under which oil or oil products containing oil not derived from the Pennsylvania grade oil fields are advertised, offered for sale, and sold; or using the word "Pennsylvania" or any abbreviation or colorable simulation thereof in or as a part of any such corporate name.

3. Representing in any manner that oil or oil products, or any proportion thereof, not derived from paraffin base crude oil, are so derived, or are paraffin oil or oil products.

4. Advertising, invoicing, distributing, or marketing used oil which has been reclaimed, either with or without reprocessing or re-refining,

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without unequivocally disclosing in a clear, conspicuous, and legible manner in such invoices and advertising and upon the containers of such oil in a clear, conspicuous, and permanent manner that such product is, or has been, reclaimed from used oil; or representing in any manner, directly or indirectly, that used oil which has been reclaimed, with or without reprocessing or re-refining, is new or unused oil.

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

ALBERT ROSE, TRADING AS PARKER-THOMPSON
COMPANY

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

Docket 4699. Complaint, Feb. 4, 1942—Decision, Apr. 13, 1942

Where an individual engaged in competitive sale and distribution of suits, overcoats, and other merchandise in the District of Columbia—

Sold and distributed his said products to the purchasing public through means of sales plans or methods involving operation of a game of chance, gift enterprise, or lottery scheme, typical of which was his so-called "Club" plan, pursuant to which he supplied each participant with a contract of purchase for a suit or overcoat for \$39, their normal retail value, to be paid at the rate of \$1 per week, and subject to the provision that should the purchaser's "ledger" or contract number correspond with the last three numbers of the Treasury balance figures, such purchaser would receive the garment without payment of remaining weekly amounts due thereon; and thereby, in so selling and distributing his merchandise in accordance with such plan, involving game of chance or sale of chance to procure an article of merchandise at less than its normal retail price, conducted lotteries, contrary to an established public policy of the United States Government, and in competition with many who do not use methods involving chance, or contrary to public policy;

With the result that many persons were attracted by said methods and the element of chance involved therein, and were thereby induced to buy his merchandise in preference to that of said competitors who do not use such methods, and with tendency and capacity to divert trade to him from them; to the substantial injury of competition in commerce:

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

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Joseph B. Danzansky, of Washington, D. C., 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 Albert Rose, an individual trading and doing business as Parker-Thompson 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