

Syllabus

IN THE MATTER OF

E. B. MOLES, DOING BUSINESS AS MALONE & MOLES

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

Docket 4557. Complaint, Aug. 6, 1941—Decision, Oct. 12, 1942

Where an individual, engaged in interstate sale and distribution of a mechanical automobile device designated by him as "Gas-Miser"; by means of advertisements in newspapers and periodicals and other advertising literature, directly and by implication—

- (a) Represented that his device would supercharge an automobile engine, was a gas and oil saver which increased the mileage, power, speed, and pep of automobiles, saved upkeep and provided easier and quicker starting;
- (b) Represented that the device reduced the thinning-out process in the cylinder oil, eliminated cylinder wash, lengthened the life of the engine, and provided a smoother-running car; and
- (c) Represented that it solved motoring problems, eliminated carbon, distributed gas vapors evenly to all cylinders, and eliminated waste;

The facts being it was incapable of supercharging an automobile engine, or lengthening the life thereof; did not possess the merits and qualities claimed therefor; afforded no solution of motoring problems; and said various representations were false, erroneous, and misleading;

With tendency and capacity of misleading a substantial portion of the purchasing public into the mistaken belief that said device possessed qualities and values which it did not, thereby inducing purchase thereof:

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

As respects evidence offered in support of vendor-advertiser's representations that his device "Gas-Miser" would supercharge an automobile engine and constituted a gas and oil saver which increased mileage, power, etc., which evidence consisted principally of testimony of several members of the public to the effect that they had received beneficial results from use of such device: Said evidence was without substantial probative value where the record contained no definite information with respect to the conditions under which, or the period of time during which, the device was used, and where there was no indication that purported results were checked on other occasions to verify their accuracy; and was insufficient to overcome evidence showing the false and misleading nature of said representations, based on comprehensive tests of the device made by the National Bureau of Standards and the testimony of the expert of the Bureau who supervised them.

Before *Mr. Arthur F. Thomas* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Joseph C. Fehr and *Mr. John W. Carter, Jr.* for the Commission.

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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 E. B. Moles, individually, and trading under the name of Malone & Moles, 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, E. B. Moles, is an individual, trading under the name of Malone & Moles, with his office and principal place of business located at 606 Pierce Street, in the city of Sioux City, in the State of Iowa. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a mechanical device for use on automobiles and trucks, designated as "GAS-MISER." Respondent causes said product, when sold, to be shipped from his place of business in the State of Iowa 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 said product among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, and for the purpose of inducing the purchase of his product, respondent has made many exaggerated, false, deceptive, and misleading statements and representations concerning the value, efficiency, and effect of his device and the results obtained by its use by means of various advertisements inserted in newspapers, periodicals, and other advertising literature distributed and circulated among purchasers and prospective purchasers. Among and typical of the statements and representations contained in these advertisements are the following:

Manufacturers and distributors in United States and Foreign Countries of the SUPER-CHARGING GAS-MISER.

INVENTS GAS SAVER FOR AUTOS.

A new invention called the Supercharging GAS-MISER has been thoroughly tested by Mr. E. B. Moles of 640 Pierce St., Sioux City, Iowa, who reports remarkable savings in gasoline and oil. It is reported the GAS-MISER not only saves up to 25% in gas and oil, but also creates a scientific super-charging action that increases power and pep. This device is fully automatic and is easily installed in any auto or truck in a few minutes. Mr. Moles wants Agents and Distributors and is willing to send a free GAS-MISER sample offer to anyone interested. Write him today.

Leading automotive engineers okay GAS-MISER. It is positively DIFFERENT from anything ever on the market before * * * but it has been exten-

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sively used, tried and proven to give satisfactory results! GAS-MISER guarantees that you must get at least 10% more miles for every gallon of gasoline from your auto * * * no matter how old or how new it may be.

Increases Power.

Saves Gasoline.

Saves upkeep cost.

GAS-MISER will bring savings in gas costs—in smoother running—more pep—easier starting—quicker pickup.

(1) Better power and pep. (2) Reducing of cylinder wash, therefore, reducing of thinning-out process in the cylinder oil. (3) Longer life of engine due to better condition of cylinder oil. (4) Product will pay for itself in gasoline savings before many months.

At Griffith's Garage—the leading repair garage in Sioux City—GAS-MISER was subjected to exhaustive tests just recently. These proved conclusively that GAS-MISER gives greater mileage, more power, more pep and a smoother running car.

GAS-MISER SOLVES MOTORING PROBLEMS.

SMOOTHER PERFORMING MOTOR. THE GAS-MISER eliminates cylinder wash and carbon, two of the most harmful agencies at work in your motor, Gas vapor is at once evenly distributed to all cylinders, with the installation of the Gas-Miser, thus smooth, powerful performance and longer engine life results. Once the Gas-Miser is installed, you will notice the smoother operation of your motor, and will be aware of the extra power and greater speed range of the motor.

GAS-MISER ELIMINATES WASTE! THE MAXIMUM energy or power of gasoline utilized in the average motor car in operation is not more than 8%. Therefore, 92% of this energy is wasted through friction, cooling attachments, and the exhaust. With the installation of the GAS-MISER a substantial part of this waste is eliminated.

PAR. 3. Through the use of the aforesaid statements and representations circulated and distributed as aforesaid, respondent represents and has represented that the device designated "GAS-MISER" will super-charge an automobile engine, is a gas and oil saver, increases the mileage, power, speed, and pep of automobiles, saves upkeep, provides easier starting and quicker pick-up, reduces thinning-out process in the cylinder oil, eliminates cylinder wash, lengthens the life of the engine, provides a smoother running car, solves motoring problems, eliminates carbon, distributes gas vapors evenly to all cylinders, and eliminates waste, and other and similar representations.

PAR. 4. The aforesaid representations, as well as others of similar import or meaning which have not been specifically set out herein, are exaggerated, false, misleading, and deceptive. In truth and in fact, respondent's device, designated "GAS-MISER," will not super-charge an automobile engine. Said device is not a gas and oil saver, nor does it increase the mileage, power, speed, and pep of automobiles. It does not save upkeep, nor does it provide easier starting and quicker pick-up. Respondent's said device will not reduce thinning-out proc-

ess in the cylinder oil, nor does it eliminate cylinder wash, nor lengthen the life of the engine, or provide a smoother running car. It does not eliminate carbon, eliminate waste, nor distribute gas vapors evenly to all cylinders, and the representation that respondent's said device solves motoring problems is grossly exaggerated. It does not and cannot fulfill any of the claims made for it in said advertisements.

PAR. 5. The use by respondent of the exaggerated false, misleading, and deceptive statements and representations as hereinabove set forth, has had and now has the capacity and tendency to, and does induce a substantial number of the purchasing public to purchase respondent's said "GAS-MISER" in the erroneous belief that the representations made by respondent are true.

PAR. 6. 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 August 6, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, E. B. Moles, individually, and trading under the name of Maloney & Moles, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of the allegations of the complaint were introduced by the attorney for the Commission, and in opposition thereto by the respondent, before a trial examiner of the Commission theretofore duly designated by it, and such 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 answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); 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. For some 2 years immediately preceding June 13, 1940, the respondent, E. B. Moles, was engaged in the sale and distri-

bution of a mechanical device for use on automobile engines, the device being designated by him as "Gas-Miser." Respondent had his office and principal place of business at 606 Pierce Street, Sioux City, Iowa, and for a time did business under the trade name Malone & Moles. All of respondent's business operations were discontinued shortly after June 13, 1940.

PAR. 2. During the period of his business operations respondent caused his device, when sold, to be transported from his place of business in the State of Iowa to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintained a course of trade in his device 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 his business and for the purpose of inducing the purchase of his product, respondent advertised his product by means of advertisements inserted in newspapers and periodicals, and by means of other advertising literature distributed among prospective purchasers. Among and typical of the statements and representations appearing in these advertisements were the following:

Manufacturers and distributors in United States and Foreign Countries of the SUPER-CHARGING GAS-MISER.

INVENTS GAS SAVER FOR AUTOS.

A new invention called the Supercharging GAS-MISER has been thoroughly tested by Mr. E. B. Moles of 640 Pierce St., Sioux City, Iowa, who reports remarkable saving in gasoline and oil.

It is reported the GAS-MISER not only saves up to 25% in gas and oil, but also creates a scientific super-charging action that increases power and pep. This device is fully automatic and is easily installed in any auto or truck in a few minutes. Mr. Moles wants Agents and Distributors and is willing to send a free GAS-MISER sample offer to anyone interested. Write him today!

Leading automotive engineers okay GAS-MISER. It is positively DIFFERENT from anything ever on the market before * * * but it has been extensively used, tried and proven to give satisfactory results! GAS-MISER guarantees that you must get at least 10% more miles for every gallon of gasoline from your auto * * * no matter how old or how new it may be.

Increases Power.

Saves Gasoline.

Saves upkeep cost.

GAS-MISER will bring savings in gas costs—in smoother running—more pep—easier starting—quicker pickup.

(1) Better power and pep. (2) Reducing of cylinder wash, therefore, reducing of thinning-out process in the cylinder oil. (3) Longer life of engine due to better condition of cylinder oil. (4) Product will pay for itself in gasoline savings before many months.

At Griffith's Garage—the leading repair garage in Sioux City—GAS-MISER was subjected to exhaustive tests just recently. These proved conclusively that

Findings

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GAS-MISER gives greater mileage, more power, more pep and a smoother running car.

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SMOOTHER PERFORMING MOTOR. THE GAS-MISER eliminates cylinder wash and carbon, two of the most harmful agencies at work in your motor. Gas vapor is at once evenly distributed to all cylinders with the installation of the Gas-Miser, thus smooth, powerful performance and longer engine life results. Once the Gas-Miser is installed, you will notice the smoother operation of your motor, and will be aware of the extra power and greater speed range of the motor.

GAS-MISER ELIMINATES WASTE! THE MAXIMUM energy or power of gasoline utilized in the average motor car in operation is not more than 8%. Therefore, 92% of this energy is wasted through friction, cooling attachments, and the exhaust. With the installation of the GAS-MISER, a substantial part of this waste is eliminated.

PAR. 4. Through the use of these statements and others of a similar nature, respondent represented, directly or by implication, that his device would supercharge an automobile engine, was a gas and oil saver, increased the mileage, power, speed, and pep of automobiles, saved upkeep, provided easier starting and quicker pickup, reduced the thinning-out process in the cylinder oil, eliminated cylinder wash, lengthened the life of the engine, provided a smoother running car, solved motoring problems, eliminated carbon, distributed gas vapors evenly to all cylinders, and eliminated waste.

PAR. 5. At the instance of the Commission, comprehensive tests of respondent's device were made by the National Bureau of Standards. The report of the Bureau describing these tests in detail and setting forth the conclusions reached by the Bureau is in evidence, and the Bureau's expert who supervised the tests also testified in person during the hearings. On the basis of this evidence, the Commission finds that the device did not possess the merits and qualities claimed by respondent. It was incapable of supercharging an automobile engine and its use resulted in no saving of gasoline or oil. It did not increase the mileage, power, speed, or pep of automobiles. It did not save upkeep, nor provide easier starting, or quicker pickup. The device did not reduce the thinning-out process in the cylinder oil nor did it eliminate cylinder wash. It was incapable of lengthening the life of the engine, nor did its use result in a smoother running car. It did not eliminate carbon or waste, nor did it distribute gas vapors evenly to the cylinders. It afforded no solution of motoring problems.

The evidence offered by respondent consisted principally of the testimony of several members of the public to the effect that they had used respondent's device on their automobiles and had received beneficial results from such use. The record, however, contains no definite information with respect to the conditions under which the

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device was used or the period of time during which it was used, nor is there any indication that the purported results were checked on other occasions to verify their accuracy. At best the evidence is of an uncertain and unscientific nature. The Commission is of the opinion that it is without substantial probative value and that it is insufficient to overcome the evidence introduced at the instance of the Commission.

PAR. 6. The Commission therefore finds that the representations made by respondent with respect to his device, as set forth above, were erroneous and misleading.

PAR. 7. The Commission further finds that the use by respondent of these erroneous and misleading representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's device possessed qualities and values which it did not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's device as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice 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, the answer of respondent, testimony, and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested), 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, E. B. Moles, individually, and trading under the name Malone & Moles, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined

in the Federal Trade Commission Act, of respondent's mechanical device designated "Gas-Miser," or any other device of substantially similar construction, whether sold under the same name or under any other name, do forthwith cease and desist from representing:

1. That said device will supercharge an automobile engine, or increase the power, speed, or pep of an automobile.

2. That said device increases mileage, saves upkeep, or saves gasoline or oil.

3. That said device provides easier starting or quicker pickup.

4. That said device reduces the thinning-out process in the cylinder oil, or eliminates cylinder wash.

5. That said device lengthens the life of an automobile engine, or provides a smoother running car.

6. That said device eliminates carbon or waste.

7. That said device distributes gas vapors evenly to all cylinders of an automobile engine.

8. That said device solves motoring problems.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Syllabus

IN THE MATTER OF

GRAND RAPIDS FACTORY SHOW ROOMS, INC., MORRIS
ZISBLATT, MEYER ZISBLATT, SAM ZISBLATT, AND
LILLIAN ZISBLATT.

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

Docket 4626. Complaint, Nov. 6, 1941—Decision, Oct. 12, 1942

Where a corporation and the two individuals directing its management, policies and operations; engaged in the interstate sale and distribution of household furniture—

- (a) Represented that their furniture was made in Grand Rapids, Mich, important center of the furniture industry, through display of their corporate name "Grand Rapids Factory Show Rooms, Inc." upon signs on the building in which their business was located, upon their business cards and those of their salesmen, and upon their stationery and invoice forms, and through statements and words to such effect by their officers, agents, and salesmen to prospective purchasers; and
- (b) Represented that their corporation owned, operated, or controlled a factory at Grand Rapids, and that their furniture was sold direct from the factory to the consumer at wholesale prices, without addition of the middleman's profit, through words "Factory Show Rooms" in its aforesaid corporate name displayed as above set forth; and also through display of words "Direct from Factory to You," and through oral statements by its officers, agents, and salesmen that its sales were made direct from the factory to the consumer and consequently at better prices than retail dealers could give, and that its prices were wholesale prices;

The facts being that only a small portion of their furniture was made in Grand Rapids, Mich., furniture of which is in widespread demand as possessing dependable qualities and other desirable characteristics; it did not own, operate, or control a furniture factory in said city or elsewhere; its sales were not made direct from the factory, but were resales at retail of furniture purchased from factories or wholesalers; said place of business was not a factory show room but a retail store; and prices charged by it were higher than the usual current wholesale prices;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public—which prefers, for reasons above indicated, to purchase household furniture made in said city, and also to buy direct from the factory as securing advantages not ordinarily obtained through retail channels, and considers that there are advantages in buying from a concern with a large volume of business indicated by "Factory Show Rooms"—into the mistaken belief said representations were true; and with effect of causing such public, because of such belief, to purchase substantial quantities of furniture from aforesaid corporation: