

IN THE MATTER OF
THE GENERAL TIRE & RUBBER COMPANY

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

Docket #608. Complaint, Oct. 7, 1941—Decision, Nov. 13, 1942

Where a corporation, engaged in the manufacture and interstate sale and distribution of automobile tires; in advertising its "General Dual 8" and "General Dual 10" tires in newspapers, periodicals, and trade journals, and through radio continuities, circulars, posters, pamphlets, spot cards, and other advertising media—

- (a) Represented directly and by implication that said tires were so constructed that an automobile equipped with either could be brought to a stop quicker on all types of road when traveling at a speed of 60 miles an hour in rain than an automobile equipped with any other tire traveling 50 miles an hour in dry weather; that they would stop a car 50 percent quicker than all other makes or brands of tires, regardless of the kind of road or weather conditions, and without skid, swerve, or tail spin; that they were America's quickest stopping tires; afforded year-round protection against skidding; and would stop straight every time;

The facts being that they would not accomplish such results, and said representations were grossly exaggerated, false, and misleading; and

- (b) Represented that said tires were of "8-ply" and "10-ply" construction, through stamping or moulding on the side walls and imprinting on the labels and wrappers thereof in connection with the size and the word "General" the phrase "Dual 8" or "Dual 10," and through use of such terms in its advertising;

The facts being that tires in question were actually of 4-ply and 6-ply construction, and did not contain 8 or 10 plies, as understood by the public familiar with manufacturers' practice of moulding or stamping size and name on the side walls of tires, together with number of plies used in construction thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that such representations were true, and with effect of placing in the hands of unscrupulous dealers means whereby they might more easily mislead the purchasing public with respect to the actual number of plies contained in said tires, and with result that a portion of said public was induced to purchase its said tires:

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. John W. Carter, Jr., for the Commission.

Wise, Roetzel & Maxson, of Akron, 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 General Tire & Rubber Co., 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, General Tire & Rubber Co., is a corporation, organized under the laws of the State of Ohio, with its principal place of business in the city of Akron, Ohio.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, among other products, of automobile tires, and in the sale and distribution thereof, in commerce, among and between the various States of the United States and the District of Columbia. Respondent has been and is now in substantial competition with other corporations, partnerships, and individuals likewise engaged in the interstate sale and distribution of automobile tires.

Respondent distributes its tires through distributors and retail dealers located in the various States of the United States and in the District of Columbia; and causes said tires when sold to be transported from its place of business located in the State of Ohio to the purchasers thereof at their respective points of location in the various 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 tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the tires manufactured, sold, and distributed by respondent, as aforesaid, are two automobile tires designated "General Dual 8" and "General Dual 10," respectively. In the furtherance of the sale and distribution of these two tires, respondent has been and is now engaged in the practice of falsely representing the character, quality, and performance ability of the aforesaid automobile tires through false, deceptive, and misleading statements and representations disseminated by advertisements inserted in newspapers, periodicals, and trade journals, and by radio continuities, circulars, posters, pamphlets, spot cards, and other advertising media.

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PAR. 4. Among and typical of such statements and representations disseminated as aforesaid are the following:

The new General Dual 8 gives you unequaled QUICK STOPPING ABILITY—stops your car quicker at 60 in the rain than ordinary tires stop it at 50 in Dry Weather;

General Dual 10's the amazing tire that stops quicker than any other tire and without skid, swerve or tail spin;

America's quickest stopping tires;

This completely new kind of tire stops you straight every time—in any weather—and 50% quicker;

Cuts normal stopping distance in half;

Year-round protection against skidding.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others of similar import and meaning, but not specifically set out herein, all of which purport to be descriptive of the quality and performance ability of its aforesaid automobile tires, respondent represents directly and by implication that said tires are so constructed, that an automobile equipped with either the "General Dual 8" or "General Dual 10" can be brought to a stop quicker on all types of road when traveling at a speed of 60 miles an hour in rain than an automobile equipped with any other tire traveling 50 miles an hour in dry weather; that said tires will stop a car 50 percent quicker than all other makes or brands of tires regardless of the kind of road or weather conditions and without skid, swerve, or tail spin; that said tires are America's quickest stopping tires; that they afford year-round protection against skidding and will stop straight every time.

PAR. 6. The foregoing statements and representations, and others similar thereto but not specifically set out herein, are grossly exaggerated, false and misleading. Said tires are not so constructed that an automobile equipped with respondent's "General Dual 8" tire or its "General Dual 10" tire, traveling at a speed of 60 miles an hour, in rain, can be brought to a stop quicker than a car equipped with any other make or brand of tires, traveling 50 miles an hour in dry weather. Said tires will not stop a car 50 percent quicker than all other makes or brands of tires under all weather conditions and on all types of roads, without skidding, swerving, or tail spin. Said tires are not America's quickest stopping tires under all conditions of road and weather. They do not afford year-round protection against skidding and they will not stop straight every time.

PAR. 7. There are among the competitors of respondent, as referred to in paragraph 2 hereof, other corporations, partnerships, and individuals engaged in the sale and distribution of automobile tires in

commerce who do not engage in the deceptive acts and practices hereinabove set forth.

PAR. 8. In addition to the aforesaid false, deceptive, and misleading statements and representations, disseminated by respondent as aforesaid, respondent is also falsely representing, in the manner and means hereinafter set forth, the quality, material, and type of construction of its aforesaid automobile tires.

Respondent's automobile tire "General Dual 8" is of "4-ply" construction. Respondent causes to be stamped or molded on the side walls thereof the size, the word "General" and, in connection therewith, the phrase "Dual 8"; but fails to have stamped or molded thereon the actual number of plies used in the construction thereof.

Respondent's automobile tire "General Dual 10" is of "6-ply" construction. Respondent causes to be stamped or molded on the side walls thereof the size, the word "General" and, in connection therewith, the phrase "Dual 10"; but fails to have stamped or molded thereon the actual number of plies used in the construction thereof.

The number of plies used in the construction of an automobile tire, is one of the factors contributing to its strength, durability, and wearing qualities, and it is also one of the factors usually taken into consideration by prospective purchasers in buying automobile tires. Prospective purchasers must rely upon the manufacturer to correctly advise the number of plies used in the construction of an automobile tire. Automobile tire manufacturers to meet this responsibility in addition to molding or stamping on the side walls of each tire, the size and name of such tire, have established the custom of also stamping or molding on the side walls of each tire the exact number of plies used in the construction of such tire; such as, for example: "4-ply," and "6-ply." Purchasers understand and rely upon such stampings and are guided thereby when purchasing tires.

The use of the phrase "Dual 8" and the phrase "Dual 10" stamped or molded on the side walls of the respective tire, as aforesaid, in the absence of any other stamping or molding designating the actual number of plies used in the construction of said tires serve as representations that said automobile tires are of "8-ply" and "10-ply" construction, respectively.

PAR. 9. The use by respondent of the foregoing false, misleading, and deceptive statements and representations, disseminated as aforesaid, 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 and representations are true; and the stamping or molding on the side walls of its automobile tires the phrase "Dual 8" and the phrase "Dual 10," respectively, without

also causing to be stamped or molded on the side walls of such tires the exact number of plies used in the construction thereof, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that that particular automobile tire, as the case may be, is of "8-ply" or "10-ply" construction; and to induce a substantial portion of the purchasing public because of such erroneous and mistaken beliefs to purchase respondent's aforesaid automobile tires "General Dual 8" and "General Dual 10," thus unfairly diverting trade to the respondent from its competitors, thereby causing substantial injury to competition in interstate commerce. Respondent thus supplies to and places in the hands of dealers, a means and instrumentality by which said dealers may mislead and deceive the purchasing public with respect to the actual number of plies in said tire.

PAR. 10. The aforesaid acts and practices of said respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair methods of competition and 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 October 7, 1941, issued and subsequently served its complaint in this proceeding upon respondent, The General Tire & Rubber Co., charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On January 26, 1942, the respondent filed its answer admitting all of the material allegations of fact set forth in the complaint. Thereafter the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in the complaint and also averring certain additional facts, and authorizing the Commission to incorporate in its findings any additional facts so averred and to make such conclusions and issue such order with respect thereto as the Commission deems appropriate, in like manner and to the same extent as if such additional facts had been originally set forth in the complaint and had been originally charged as constituting unfair and deceptive acts and practices in commerce. Respondent's substitute answer further waived all hearing and trial of the issues, the filing of briefs, and the presentation of oral argument before the Commission. Thereafter this proceeding regularly came

Findings

on for final hearing before the Commission on the 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, The General Tire & Rubber Co. (referred to in the complaint as General Tire & Rubber Co.), is a corporation organized under the laws of the State of Ohio, with its principal place of business in the city of Akron, Ohio.

PAR. 2. For more than 1 year prior to October 1941, respondent was engaged in the manufacture, among other products of automobile tires, and in the sale and distribution thereof in commerce among and between the various States of the United States and in the District of Columbia. Respondent distributed its tires through distributors and retail dealers located in the various States of the United States and in the District of Columbia, and caused said tires, when sold, to be transported from its place of business located in the State of Ohio to the purchasers thereof at their respective points of location in the various States of the United States and in the District of Columbia. Prior to the recent action of the United States Government restricting the sale of tires for passenger cars, respondent maintained a course of trade in said tires in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Among the tires manufactured, sold, and distributed by respondent, as aforesaid, were two automobile tires designated "General Dual 8" and "General Dual 10," respectively. In the furtherance of the sale and distribution of those two types of tires, respondent has misrepresented the character, quality, and performance ability of the aforesaid automobile tires through deceptive and misleading statements and representations contained in advertisements inserted in newspapers, periodicals, and trade journals, and also contained in radio continuities, circulars, posters, pamphlets, spot cards, and other advertising media.

PAR. 4. Among and typical of such statements and representations disseminated as aforesaid are the following:

The new General Dual 8 gives you unequalled QUICK STOPPING ABILITY—Stops your car quicker at 60 in the rain than ordinary tires stop it at 50 in Dry Weather.

General Dual 10's the amazing tire that stops quicker than any other tire and without skid, swerve or tail spin.

America's quickest stopping tires.

This completely new kind of tire stops you straight every time—in any weather—and 50% quicker.

Cuts normal stopping distance in half.

Year-round protection against skidding.

Respondent's answer states that the aforesaid statements and representations were not disseminated subsequent to a date which was prior to the date of the issuance of the complaint. The date referred to by respondent was, however, according to the record herein, subsequent to the date upon which the investigation was instituted.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and others of similar import and meaning not specifically set out herein, all of which purported to be descriptive of the quality and performance ability of its aforesaid automobile tires, respondent represented, directly and by implication, that said tires were so constructed that an automobile equipped with either the "General Dual 8" or "General Dual 10" could be brought to a stop quicker on all types of road when traveling at a speed of 60 miles an hour in rain than an automobile equipped with any other tire traveling 50 miles an hour in dry weather; that said tires would stop a car 50 percent quicker than all other makes or brands of tires, regardless of the kind of road or weather conditions, and without skid, swerve, or tail spin; that said tires were America's quickest stopping tires; and that they afforded year-round protection against skidding and would stop straight every time.

PAR. 6. The foregoing statements and representations, and others similar thereto but not specifically set out herein, were grossly exaggerated, false, and misleading. Said tires were not so constructed that an automobile equipped with respondent's "General Dual 8" tire or its "General Dual 10" tire, traveling at a speed of 60 miles an hour, in rain, could be brought to a stop quicker than a car equipped with any other make or brand of tires traveling 50 miles an hour in dry weather. Said tires would not stop a car 50 percent quicker than all other makes or brands of tires under all weather conditions and on all types of roads, without skidding, swerving, or tail spin. Said tires were not America's quickest stopping tires under all conditions of road and weather. They did not afford year-round protection against skidding and they would not stop straight every time.

PAR. 7. In addition to the statements and representations disseminated by respondent as aforesaid, respondent also represented, in the manner and means hereinafter set forth, the quality and type of construction of its aforesaid automobile tires.

Respondent's automobile tire "General Dual 8" is of "4-ply" construction. Respondent caused to be stamped or molded on the side walls and imprinted on the labels and wrappers thereof the size, the word "General," and, in connection therewith, the phrase "Dual 8;" but prior to November 11, 1941, respondent failed to have stamped or molded thereon, or imprinted or stamped on wrappers or labels thereof, the actual number of plies used in the construction thereof.

Respondent's automobile tire "General Dual 10" is of "6-ply" construction. Respondent caused to be stamped or molded on the side walls and imprinted on the labels and wrappers thereof the size, the word "General," and, in connection therewith, the phrase "Dual 10"; but prior to November 11, 1941, respondent failed to have stamped or molded thereon, or imprinted or stamped on wrappers or labels thereof, the actual number of plies used in the construction thereof.

Subsequent to November 1941, and until respondent was prohibited by the United States Government from manufacturing passenger car tires, respondent's "Dual 8" and "Dual 10" tires were stamped with the actual number of plies used in the construction thereof, and the wrappers and labels thereof also revealed the actual ply construction.

Respondent's answer admits that while it has not engaged in any national advertising of its "Dual 8" and "Dual 10" automobile tires for approximately 1 year last past, prior to that time, in some instances, its national advertisements contained statements revealing the fact that such tires were of four and six ply construction, respectively, and in other advertisements no mention was made of the ply construction, although the names "Dual 8" and "Dual 10" were used by respondent in its general advertising literature as descriptive trade names for the tires involved in this proceeding.

The number of plies used in the construction of an automobile tire is one of the factors contributing to its strength, durability, and wearing qualities, and it is also one of the factors usually taken into consideration by prospective purchasers in buying automobile tires. Prospective purchasers must rely upon the manufacturer to correctly advise the number of plies used in the construction of an automobile tire. Automobile tire manufacturers, to meet this responsibility, in addition to molding or stamping on the side walls of each tire the size and name of such tires, have established the custom of also stamping or molding on the side walls of each tire the exact number of plies used in the construction of such tire; such as, for example, "4-ply" and "6-ply." Purchasers understand and rely upon such stampings and are guided thereby when purchasing tires.

The Commission finds that the use of the phrase "Dual 8" and the phrase "Dual 10" stamped or molded on the side walls of the re-

spective tires and imprinted or stamped on the labels or wrappers thereof, in the absence of any other stamping, imprinting, or molding actually designating the number of plies used in the construction of said tires, constituted a representation to ultimate purchasers that said automobile tires were of "8-ply" and "10-ply" construction, respectively, when as a matter of fact such automobile tires were of 4-ply and 6-ply construction, respectively.

Similarly, the Commission finds that the use of the phrases "Dual 8" and "Dual 10" as descriptive names for its tires in advertising literature distributed by the respondent in which no statement was made that said tires were of 4-ply and 6-ply construction, respectively, constituted a representation to ultimate purchasers that such tires were of 8-ply and 10-ply construction. Respondent's use of the terms "Dual 8" and "Dual 10" to designate, describe, and refer to certain of its passenger automobile tires, without an accompanying disclosure as to the actual ply construction, placed in the hands of unscrupulous dealers the means and instrumentality by which such dealers might more easily mislead the purchasing public with respect to the actual number of plies in said tires.

PAR. 8. The use by the respondent of the misleading and deceptive statements and representations set out in paragraph four and disseminated as aforesaid had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and that said automobile tires had the quality and performance ability as represented by respondent; and the stamping or molding on the side walls of said automobile tires and the imprinting or stamping on the labels and wrappers thereof of the phrases "Dual 8" and "Dual 10," and the use by respondent of those phrases in its advertising literature, without clearly revealing in connection therewith the actual ply construction of the particular tire therein referred to, had the tendency and capacity to mislead and deceive a portion of the purchasing public into the erroneous and mistaken belief that that particular automobile tire, as the case may be, was of "8-ply" or "10-ply" construction. As a result of such mistaken and erroneous beliefs which were induced by the respondent's acts and practices herein detailed, a portion of the purchasing public has been induced to purchase respondent's passenger automobile tires.

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 the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in the 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 its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The General Tire & Rubber Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its automobile tires in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that an automobile equipped with respondent's "General Dual 8" or "General Dual 10" tires can be brought to a stop quicker when traveling in rain at a speed of 60 miles an hour than an automobile equipped with any other make or brand of tires traveling in dry weather at 50 miles an hour; that said automobile tires will stop a car 50 percent quicker than all other makes or brands of tires without skid, swerve, or tail spin; or that said tires are America's quickest stopping tires, regardless of road or weather conditions, that they afford year-round protection against skidding, or that they will stop straight every time; and from making any other representations respecting the quality or performance ability of said automobile tires which are not in fact true.

2. Using the phrase "Dual 8" or "Dual 10" in any manner to describe or refer to respondent's said tires without clearly disclosing, in connection with such use, the actual number of plies used in the construction of the particular automobile tire referred to.

3. Representing, directly or through implication, that any of respondent's automobile tires contain more plies than is actually the fact.

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.

IN THE MATTER OF

EUGENE RUSSELL JAFFE (ALIAS E. J. RUSSELL), TRADING AS STERLING SALES COMPANY AND CRAFTSMAN SALES COMPANY

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

Docket 4656. Complaint, Dec. 9, 1941—Decision, Nov. 13, 1942

Where an individual, engaged in competitive interstate sale and distribution of numerous articles of merchandise, including cameras, radios, comforters, and electric clocks—

Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes through including in circular letters sent to numerous people throughout the United States soliciting their aid in sale of his said goods, push cards and circulars explaining his merchandising plan, under which the number concealed in disk under feminine name selected by a customer determined the amount he paid, the person selecting feminine name corresponding with that concealed under card's large master seal received an electric clock, the three persons pushing certain "lucky numbers" received automatic pencils, and others received nothing; and the operator, responsible for sale of such chances, remission of proceeds, and distribution of merchandise to the winners, was compensated by an electric lamp; and thereby

Supplied to and placed in the hands of agents or distributors thus secured by him the means of conducting lotteries in the sale of his merchandise in accordance with such plans, under which the amount of money paid and the particular article, if any, received were determined wholly by lot or chance; contrary to an established public policy of the United States Government and in competition with those who were not willing to use any method of chance;

With result that many members of the public were attracted by said individual's sales plan and by the element of chance involved therein, and were thereby induced to buy and sell said merchandise in preference to that of said competitors; and with tendency and capacity to divert substantial trade unfairly to him from them:

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 acts and practices therein.

Before *Mr. John W. Addison*, trial examiner.

Mr. J. V. Mishou and *Mr. J. W. Brookfield, Jr.* for the Commission.

Mr. Henry Junge and *Mr. Benjamin F. Morrison*, 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