

IN THE MATTER OF
WESTVILLE REFINERY, INC.

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

Docket 4370. Complaint, Nov. 7, 1940—Decision, Mar. 27, 1943

Where a corporation, engaged in reclaiming and processing used motor oil, and in interstate sale and distribution of said product in competition with others dealing in reclaimed motor oils and in new motor oils refined from virgin crude oils—

- (a) Represented that it operated an oil refinery, through use of word "Refinery" in its corporate name which it displayed as such or in its abbreviated form on letterheads, invoices, and other printed material, and on labels attached to the containers in which its products were displayed and sold;

The facts being it was engaged solely in reclaiming and processing used motor oil obtained from the draining of motor crankcases; did not handle virgin crude oil at all, or have the equipment required for the refining of such oil;

- (b) Represented that its products were "Pennsylvania" oil, were made entirely from paraffin base stock, and were new and unused oils made from virgin crude oil, through display on containers thereof of legends "Para-Penn Motor Oil"; "Superlube—100% pure Pennsylvania base dewaxed Motor Oil"; "This oil is Refined from 100% Pure Pennsylvania and Other High Grade Paraffin Base Motor Oils"; "* * * refined from our choicest paraffin base stocks"; "Packed at the refinery * * *"; and "America's Finest Motor Oil";

The facts being products in question were not "Pennsylvania oil," or made from crude oil produced in the Pennsylvania oil fields or western portion of Pennsylvania and contiguous portions of Ohio, New York, and West Virginia, well and favorably known to the purchasing public and preferred by a substantial portion thereof over oils originating in other localities; nor were said oils made entirely from paraffin base stock, similarly preferred; nor, as implied, new unused oil refined from the virgin crude oil, but, obtained principally from Chicago and Detroit dealers, they were mixed indiscriminately before receipt by it, and it was without knowledge as to what part, if any, of its oil had its origin in the Pennsylvania oil fields or other fields producing oil with paraffin base; and

- (c) Failed to disclose the true nature of its products, which had the appearance of new and unused oil and were sold in containers such as are used for new oil, with resulting deception of the public;

With tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public in aforesaid respects, thereby inducing purchase of substantial quantities of such products; whereby trade was diverted unfairly to said corporation from its competitors, among whom are those who do not misrepresent their business status or nature of their products:

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. Miles J. Furnas*, trial examiner.

Mr. R. A. McOuat, *Mr. S. Brogdyne Teu, II*, and *Mr. Carrel F. Rhodes* for the Commission.

Mr. Vernon B. Lowrey and *Mr. Charles C. Shea*, of Washington, D. C., and *Mr. William A. Flanigan*, of Highland Park, Mich., 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 Westville Refinery, Inc., 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, Westville Refinery, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Indiana, with its principal office and place of business located in the city of Westville, State of Indiana.

PAR. 2. Respondent has been for more than 3 years last past, and is now, engaged in the business of reclaiming and processing used motor oil and in selling and distributing such reclaimed oil in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes such oil, when sold, to be transported from its principal place of business in Indiana to purchasers thereof located in States of the United States other than Indiana, and in the District of Columbia.

PAR. 3. During the time above mentioned, other corporations and individuals and firms in various States of the United States have been engaged in the sale and distribution, in commerce between and among the various States of the United States and in the District of Columbia, of reclaimed motor oils. Other corporations, individuals, and firms have been similarly engaged in the sale and distribution in commerce among and between the various States of the United States of new and unused motor oils refined from virgin crude oils. Respondent has been, during the time aforesaid, in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with such corporations, individuals, and firms.

PAR. 4. In connection with the offering for sale and sale of its said reclaimed motor oil, as aforesaid, respondent represents that it operates an oil refinery. Said representation is made by use of the word "re-

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finery" in its corporate name, "Westville Refinery, Inc.," and by an abbreviated form thereof, "Westville Refinery;" by the use of one or the other of said names on its letterheads, invoices, and other printed matter, as well as on labels attached to the containers in which its said product is sold and in which said product is displayed for sale to the consuming public; and by otherwise referring to its reclaiming plant as a refinery.

In truth and in fact, respondent does not own and operate or control an oil refinery in the sense in which such term is used and understood among members of the petroleum industry and by members of the purchasing public, namely, a place with the proper and usual equipment where virgin crude oil is refined and prepared for use. Respondent does not refine and prepare virgin crude oil for use nor does it have the proper and usual equipment for such purpose. Respondent is engaged solely in reclaiming and processing used motor oil from crankcase drainings.

PAR. 5. In connection with the offering for sale and sale of its said product, respondent represents that its said product is Pennsylvania oil with a paraffin base; that the base thereof, is wholly Pennsylvania oil; and that it is made solely from paraffin base stock. Such representations are made by statements printed on the labels attached to the containers in which said product is displayed for sale and sold to the public, and include the following:

Para-Penn Motor Oil

Superlube—100% pure Pennsylvania base dewaxed Motor Oil.

This oil is Refined from 100% Pure Pennsylvania and Other High Grade Paraffin Base Motor Oils.

* * * refined from our choicest paraffin base stocks.

The use by the respondent of the brand name "Para-Penn" to designate and describe its said motor oil constitutes within itself a representation that the oil so designated is oil from the Pennsylvania oil field and that it has a paraffin base.

In truth and in fact, respondent's said product is not Pennsylvania oil, nor is it made wholly from paraffin base stock. The used motor oil from which respondent prepares its product constitutes a mixture of oils from various oil fields, including fields and regions producing oils which do not have a paraffin base. The process used by respondent in preparing its product does not remove all of the oils which originated in such other fields. Some of the used oil from which respondent's product is made may have come originally from the Pennsylvania oil field and some may have come from other oil fields producing oil having a paraffin base. Respondent, however, has no knowledge as to what, if any, part of the used motor oil from which

its product is made comes from the Pennsylvania oil field nor as to what part comes from other oil fields producing oil with a paraffin base.

The term "Pennsylvania Oil," as used in the petroleum industry, and as understood by the trade and the consuming public, means oil made from crude oil produced in the geographical area known as the Pennsylvania oil field. For many years Pennsylvania oil has been well and favorably known to the purchasing public, and there is a marked preference on the part of a substantial portion of the purchasing public for such oil over oils having their origin in other localities. 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, in connection with the offering for sale and sale of its said product, makes use of words, terms, phrases, and statements which represent, import, or imply that its said reclaimed and processed motor oil is new and unused oil made from virgin, crude oil. Examples of such words, terms, phrases, and statements which appear on the containers in which respondent's product is displayed for sale and sold to the trade and to the consuming public, are the following:

Packed at the refinery * * *

Para-Penn Motor Oil.

America's Finest Motor Oil.

* * * Refined From Our Choicest Paraffin Base Stocks.

This Oil is Refined from 100% Pure Pennsylvania and Other High Grade Paraffin Base Motor Oils.

Such implication is further created by the use of respondent's corporate name, or contraction thereof, containing the word "Refinery," in connection with the sale of said product as previously set out herein.

The implication that the respondent's product is new and unused oil refined from virgin, crude oil is further increased 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 and from drums and 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 that said product is old, used oil from motor crankcase drainings which has been reclaimed and processed.

The general understanding and belief on the part of dealers and the 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 or from 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 and 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 or substantially of old, used oil from the drainings of motor crankcases which has been reclaimed and processed by respondent. In order to produce oils lighter or heavier than the oil produced by respondent's methods of reclaiming and processing the old, used motor oil, as aforesaid, respondent at times causes to be added to such reclaimed and processed oil, a small percentage of new oil to effect the desired variations but such additions, when made, are not sufficient in amount to change the general character of the resulting mixture.

PAR. 7. The acts and practices of the respondent as herein set forth serve also to place in the hands of uninformed and unscrupulous dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive members of the purchasing public.

PAR. 8. The aforesaid acts and practices of the respondent have the tendency and capacity to, and do, mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the origin and nature of respondent's product and with respect to respondent's business status, and as a result the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondent's product. Trade has thereby been diverted unfairly to the respondent from its competitors, many of whom do not misrepresent their business status or the origin or nature of their products, and in consequence substantial injury has been done, and is being done, by the respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on Nov. 7, 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Westville Refinery, Inc., 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 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 before trial examiners of the Commission theretofore duly designated by it (no evidence being offered on behalf of respondent), 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 examiners 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. The respondent, Westville Refinery, Inc., is a corporation, organized and existing under and by virtue of the laws of the State of Indiana, with its principal office and place of business located in the City of Westville, Ind. Respondent is now and for a number of years last past has been engaged in the business of reclaiming and processing used motor oil and selling and distributing such reclaimed oil.

PAR. 2. Respondent causes and has caused its products, when sold, to be transported from its place of business in the State of Indiana to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and 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 respondent is and has been in substantial competition with other corporations and with firms and individuals 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 reclaimed motor oils and of new and unused motor oils refined from virgin crude oils.

PAR. 4. In connection with the offering for sale and sale of its products respondent has represented that its operates an oil refinery, such representation being made through the use of the word "Refinery" in its corporate name, "Westville Refinery, Inc.," and in the abbreviated form, "Westville Refinery," which is also used by respondent. One or the other of these names has appeared on respondent's letterheads, invoices and other printed material, as well as on labels

attached to the containers in which respondent's products are displayed for sale and sold to the public.

The Commission finds from the evidence that respondent does not operate an oil refinery in the sense in which such term is used and understood in the petroleum industry and by the purchasing public, namely, a plant in which virgin crude oil is refined and the various products thereof separated and prepared for commercial use. Respondent is engaged solely in reclaiming and processing used motor oil obtained from the draining of motor crankcases. It does not handle virgin crude oil at all, nor does its plant have the equipment required for the refining of crude oil.

PAR. 5. There also appear on the labels attached to the containers in which respondent's products are displayed and sold the following legends or statements:

Para-Penn Motor Oil.

Superlube—100% pure Pennsylvania base dewaxed Motor Oil.

This oil is Refined from 100% Pure Pennsylvania and Other High Grade Paraffin Motor Base Oils.

* * * refined from our choicest paraffin base stocks.

Packed at the refinery * * *

America's Finest Motor Oil.

Through the use of these legends and statements, and others of a similar nature, respondent has represented, directly or by implication, that its products are "Pennsylvania" oil, that they are made entirely from paraffin base stock, and that they are new and unused oils made from virgin crude oil.

The implication that respondent's products are new and unused oil refined from virgin crude oil is strengthened as a result of the use of the word "Refinery" in respondent's corporate and trade name, and by reason of the fact that respondent's products have the appearance of new and unused oil and are displayed and sold in containers of the same general size and appearance as those used for new, unused oil. Respondent's containers bear no label or marking indicating that the product is used oil from motor crankcase drainings which has been reclaimed and processed.

PAR. 6. The term "Pennsylvania oil," as used in the petroleum industry and as understood by the trade and a substantial portion of the consuming public, means oil made from crude oil produced in the geographical area known as the Pennsylvania Oil Field, which includes the western portion of Pennsylvania and contiguous portions of New York, Ohio, and West Virginia. Pennsylvania oil has for some time been well and favorably known to the purchasing public, and there is a preference on the part of a substantial portion of the public for such oil over oils having their origin in other localities. There is also

a preference on the part of a substantial portion of the public for motor oils having a paraffin base over those which do not have such base.

PAR. 7. The evidence further shows that in the absence of information to the contrary, dealers and members of the purchasing public usually understand and believe 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 rather than used oil which has been reclaimed and processed. There is a preference on the part of a substantial portion of the public for new and unused oil over a reclaimed product, such preference being due in part to a belief that new and unused oil is superior in quality.

PAR. 8. Respondent's products are not Pennsylvania oil, nor are they made entirely from paraffin base stock. The used oil from which respondent's products are made is obtained by it from various sources, principally from dealers in Chicago, Ill., and Detroit, Mich. Some of the oil may have had its origin in the Pennsylvania Oil Field, and some of it may have originated in other oil fields producing oil having a paraffin base. The various oils, however, have been mixed indiscriminately before they are received by respondent, and respondent has no knowledge as to what, if any, part of the oil had its origin in the Pennsylvania Oil Field or in other fields producing oil having a paraffin base. The Commission therefore finds that the terms "Pennsylvania," "Para-Penn," and "paraffin base," used by respondent to describe its products, are erroneous and misleading, as are also the other statements representing or implying that respondent's products are new, unused oil refined from virgin crude oil. The Commission further finds that the failure of respondent to disclose the true nature of its products likewise results in the deception of the public.

PAR. 9. The acts and practices of the respondent as herein set forth have the tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the origin and nature of respondent's products and with respect to respondent's business status, and the tendency and capacity to cause such dealers and members of the public to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief engendered through such acts and practices. In consequence, substantial trade has been diverted unfairly to respondent from its competitors, among whom are those who do not misrepresent their business status or the origin or nature of their products.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public and of respondent's competitors, and

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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 in support of the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it (no evidence having been offered by respondent), report of the trial examiners 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, Westville Refinery, Inc., 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 oil in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Refinery," or any other word of similar import, as a part of respondent's corporate or trade name; or otherwise representing, directly or by implication, that respondent owns, operates, or controls a refinery.
2. Using the word "Pennsylvania," "Penn," or "Para-Penn," or any other word of similar import, to designate or describe respondent's products; or otherwise representing, directly or by implication, that respondent's products are Pennsylvania oil.
3. Representing, directly or by implication, that respondent's products are made entirely from oils having a paraffin base.
4. Representing, directly or by implication, that respondent's products are new and unused oil made from virgin crude oil.
5. Advertising, offering for sale, or selling respondent's products without disclosing clearly and conspicuously in respondent's advertising and invoices, and on the containers in which such products are displayed and sold, that such products are used oil which has been reclaimed.

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.

Syllabus

IN THE MATTER OF

MARSHALL FIELD & COMPANY, DOING BUSINESS AS
KARASTAN RUG MILLS

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

Docket 4493. Complaint, Apr. 26, 1941—Decision, Mar. 27, 1943

Where a corporation, engaged under the name "Karastan Rug Mills" in the manufacture and competitive interstate sale and distribution of rugs which so closely simulated the true Oriental, hand-made product with its knotted threads and other distinctive features, as to be practically indistinguishable therefrom, including as its leading line its "Karastan" rug for which it used the advertising slogan "Karastan * * * The Wonder Rug of America," more recently also included the term "Machine Woven U. S. A." and in connection with which it described the similarity to Oriental rugs accomplished by power loom weaving, and which it further featured in the labeling and advertising of its other rugs through use of the statement "By the Makers of Karastan"—

- (a) Represented that certain of its said rugs were genuine Orientals and made in the Orient by hand, through designation of its said machine made products by such coined names as "Karashah," "Karavere," "Kharol" and "Kara Kirman" in simulation of the names of such true Orientals as "Karadagh," "Karabagh," and "Karajah" of northern Persia and the southern Caucasus, or the well-known Turkish "Kirman";
- (b) Represented that certain of its rugs were "Oriental Reproductions" or "Authentic Oriental Reproductions" through labels firmly attached thereto and plainly discernible in connection with retailers' display of the rugs for sale;

When in fact they were not exact copies or reproduction of true Orientals in structure or method of manufacture, but merely simulated the appearance thereof, and, while in some instances it had endeavored to copy designs of typical Oriental rugs, in others it used designs which it had created and which were adaptations or combinations of Oriental motifs;

With tendency and capacity to mislead purchasers into the mistaken belief that such representations and designations were true and that rugs so designated were genuine Oriental rugs, thereby inducing purchase thereof; and with effect of placing in the hands of retail dealers means of misleading and deceiving the purchasing public; with result that trade was diverted unfairly to it from competitors who truthfully represent their products:

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 and deceptive acts and practices therein.

Before *Mr. James A. Purcell*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Wilson & McIlvaine, of Chicago, Ill., for respondent.