

SYLLABUS

IN THE MATTER OF
WALTER KIDDE & COMPANY, INC.

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

Docket 3866. Complaint, Aug. 7, 1939—Decision, Mar. 29, 1943

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of its "Lux" carbon dioxide fire-extinguishing apparatus, among other fire-fighting equipment—

- (a) Falsely represented in advertisements and sales promotion literature that it originated and pioneered the carbon dioxide method of fire-extinguishing, that every important development of carbon dioxide equipment and technique had been accomplished by its engineers, and that every basic improvement in every fire-extinguisher involving carbon dioxide on the market was a development of it;

The facts being that while its senior vice-president, as chief engineer, in 1924, conceived two major improvements in the original "Lux" system, said system involved a 1920 Swedish patent directed to one of the most difficult problems in the mechanics concerned with the use of carbon dioxide as a fire extinguisher, right to use of which, along with trade name "Lux" it acquired under license arrangements with Swedish company owner in 1923; and it acquired in 1929 and 1930, following declarations of interference by the Patent Office—and notwithstanding earlier work by it or by its employee, having to do with pressure operated fluid release devices, and a discharge to produce a denser and wider coverage and concentration, without knowledge, as contended, of competitor's patents or developments—patent rights and applications relating thereto through licensing agreements and through acquisition of all the assets and business of a company to which particular invention had been assigned;

- (b) Represented that its carbon dioxide fire extinguishers had "108 extra values or features" which could not be obtained in its competitors' fire extinguishers, through distributing booklets which contained illustrations and representations relative to its said "Lux" extinguisher, and on the cover of which appeared the statement "108 Extra Values";

The facts being that by virtue of license agreements with certain competitors, the inventions covered by the patents referred to were used by them; and the majority of the features referred to in said booklet were not exceptional to its product but were to be found also in those of its competitors;

- (c) Represented, as typical exclusive features of its said "Lux" extinguisher, that its cylinders were drawn from plates instead of billets so that flow lines of the grain follow the contour of the cylinders; were made with spherical bottoms and domes, thus providing the greatest strength with the least weight; and were subjected to controlled heat treatment and tempering to produce uniform strength;

The facts being that fire-extinguishing apparatus of competitors were also drawn from plates and made with spherical bottoms and domes, and all manufacturers subjected such apparatus to controlled heat treatment and

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tempering, to produce cylinders of uniform strength, as required under regulations of the Interstate Commerce Commission;

- (d) Represented that the valves of its extinguishers were fitted with recoil preventers;

The facts being that during the year 1936, and prior thereto, the recoil preventer was being used by its competitors, although covered by reissue patent issued to it in 1933;

- (e) Represented, as aforesaid that all Lux discharge horns used nozzles with orifices of the patented Jones design, which was the only nozzle that operated perfectly under all temperature conditions and permitted lengthly discharge at low temperatures without freezing, and that discharge horns on all Lux portable extinguishers were nonconductors of electricity as the soft rubber grip on the horn covered all metal parts;

The facts being that after March 31, 1936, the nozzle equipment on its apparatus was not of the "Jones" design, but a nozzle of said design was then and since had been used by its competitors, and during said year and theretofore, the soft rubber grips were also an accompaniment of the apparatus of a competitor;

- (f) Represented, as aforesaid, that no fire-extinguishing apparatus, device, or equipment other than its own would put out airplane fires both on the ground and during flight, and that its equipment was the only fire-extinguishing equipment for airplane-engine fires approved by the United States Army and Navy;

The facts being that equipment of a certain competitor had been approved by the Army and Navy since 1935 as apparatus which would extinguish such fires both on the ground and during flight; and

- (g) Falsely disparaged competitors and the merit of competing products through letters sent to prospective purchasers containing such typical misrepresentations as that the fire-extinguishing equipment of a certain competitor had been in existence for only two years, with the result that said competitor was still having difficulty with problems that it, itself, encountered and overcame eight or ten years before; and that its competitors did not carry a supply of parts for emergency use in either Chicago or St. Louis;

The facts being that competitor referred to had been in existence since 1925, and during the year 1936, and prior thereto, had a direct factory warehouse branch, and salesmen operating under its Chicago district manager, and its branch warehouses carried a substantial stock of extinguishers and parts;

With effect of misleading and deceiving prospective purchasers into the false belief that said representations were true, thereby causing them to purchase said fire-extinguishing apparatus; whereby trade was diverted unfairly to it from competitors so engaged:

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.

Mr. R. P. Bellinger for the Commission.

Colladay, Colladay & Wallace, 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 Walter Kidde & Co., Inc., 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, Walter Kidde & Co., Inc., is a corporation, doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 140 Cedar Street, in the city of New York of said State, and with a factory located in the city of Bloomfield, State of New Jersey. Said respondent now is, and for several years last past has been, engaged in the business of manufacturing, offering for sale, and selling a line of fire-fighting and fire-extinguishing equipment, including carbon dioxide fire-extinguishing apparatus having the trade name "Lux," in commerce among and between the various States of the United States and in the District of Columbia and among and between the United States and foreign countries.

In the course and conduct of its aforesaid business respondent now causes, and has caused, said products, when sold or ordered, to be shipped and transported from its aforesaid places of business to purchasers located in States other than the States of New York and New Jersey, and to purchasers located in the District of Columbia and in foreign countries. At all times herein mentioned, respondent has maintained a course of trade in said products in said commerce and has been and now is in competition with other corporations, firms, partnerships, and individuals engaged in the business of offering for sale and selling fire-fighting and fire-extinguishing equipment and apparatus in said commerce.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, and in soliciting the sale of and selling its products, more particularly its carbon dioxide fire-extinguishing apparatus, respondent caused certain advertisements and sales promotion literature to be distributed and circulated to and among purchasers and prospective purchasers of said products in and throughout the various States of the United States, and in the District of Columbia and foreign countries, in which there appeared statements and representations, of which the following, among others, are typical.

Every important development of carbon dioxide equipment and technique has been accomplished by LUX engineers.

LUX engineers developed carbon dioxide fire extinguishing. They have specialized in its application for fifteen years. They are responsible for every worthwhile improvement made in carbon dioxide extinguishers.

The same engineering ability that conceived and pioneered the carbon dioxide method of fire extinguishment is still on the job, keeping Lux years ahead of competition. Not only was this method of fighting fires developed by Kidde engineers in the face of stiff competition from our present competitors and licensees, both were then recommending other types as being inferior to gas, but every basic improvement and every single model (carbon dioxide) now on the market is a Kidde development. In contrast, the experience of our competitors had been entirely with carbon tetrachloride and foam equipment.

For 200 years, carbon dioxide has been known as a fire extinguisher. Walter Kidde & Company developed the secret of success—the secret of getting liquified carbon dioxide out of the cylinder quickly—without freezing.

Each LUX installation is designed by the manufacturer who developed carbon dioxide protection.

The mechanical advantages of Lux extinguishers outlined in this book are fully protected by patents, many of which have been successfully litigated. The background of experience incorporated in Lux extinguishers is an exclusive Lux possession that cannot be copied.

The aforesaid statements and representations were and are false and misleading and an unfair disparagement of respondent's competitors and their products in that the same imply and represent that the engineering and technical staff of respondent alone were and are responsible for the invention and successful adaptation of carbon dioxide to the extinguishment of fires and for every important development and improvement in carbon dioxide equipment for the extinguishment of fires, and that all the products of such development are the exclusive possessions of respondent, whereas such are not the facts. The successful adaptation of carbon dioxide to the extinguishment of fires and the invention of equipment therefor was first accomplished by engineers, inventors, patentees, and persons at no time in the employ of respondent and having no connection with respondent. Numerous inventions, developments, and important improvements of such type of equipment have been made and patented by others than respondent and by others not in the employ of respondent, and a substantial number of such inventions and improvements have been and are used by respondent by virtue of licenses from competitors and others not otherwise connected with respondent. The said implications and representations were and are further false and misleading for the reason that a substantial number of the inventions and mechanical advantages of respondent's Lux fire extinguishers were and are used and open to use by competitors under licenses therefor granted by respondent.

PAR. 3. Among the advertising and sales promotion literature used and circulated by respondent, as aforesaid, certain undated catalogs or booklets containing illustrations, statements, and representations

relative to respondent's carbon dioxide fire extinguisher, designated as "Lux," carried on the cover thereof the statement, "108 EXTRA VALUES." Of the 108 separate value items therein listed and referred to, many are further stated and represented to be "An Exclusive LUX feature," the said statement being printed after an asterisk at the bottom of each page of said catalogs or booklets. Typical of said values referred to and represented as "extra values" and as "exclusive LUX features" are the following, among others:

Lux cylinders are drawn from plates instead of billets.

Every Lux cylinder is hydraulically tested at 3000 lbs. pressure. Lux cylinders not only meet, but exceed, I. C. C. requirements.

Locking pins, having a spring tension, hold Lux valves shut against vibration.

Lux valves are fitted with a patented recoil preventer.

The Lux recoil preventer has no moving parts, does not restrict the gas flow, and cannot be accidentally removed.

Soft rubber grip on the horn covers all metal parts.

Each Lux cylinder is equipped with a rotary cutter valve * * * The cutter valve cuts out the sealing disc completely so that there is no obstruction left in the path of the gas to restrict its flow and cause freezing.

Lux screening nozzles are used to prevent entrainment of wear through doors and windows that cannot be closed. They produce the only effective gas curtain.

Special Lux electrically driven carbon dioxide recharging units.

The foregoing statements imply and represent that the items or values listed as "extra values" are each and all values which are peculiar and limited to respondent's product and not available in the products of respondent's competitors, and that said values are "extra" and not normally to be had in carbon dioxide fire extinguishers. The said implication and representation is not offset by specific reference to certain items or values as "exclusive Lux features," but insofar as reference is made to certain items or values as being "exclusive Lux features," the said statements imply and represent that all the items or values so referred to are peculiar and limited to respondent's product only, that none of them are available in the products of respondent's competitors, and that the same are "extra" and not normally to be had in carbon dioxide fire extinguishers. The said implications and representations are false and misleading in that most of the items or values referred to in said catalogs or booklets are essential to and normally to be found in carbon dioxide fire extinguishers and are not "extra," and most of said items or values are not peculiar or limited to respondent's product as distinguished from the products of certain competitors. There are, and were at the time said statements were made, and during the time the said catalogs or booklets were in use, competitors of respondent who made and offered for sale and sold carbon dioxide fire extinguishers having the items or values listed and referred to in said catalogs or booklets.

Other statements made in said catalogs or booklets falsely and misleadingly representing items or values to be "EXTRA VALUES" and "exclusive Lux features," were and are as follows:

The new oval-shaped horn on Lux extinguishers gives a discharge having 10 to 15% longer range than the old-fashioned round horn.

All Lux discharge horns use nozzles with orifices of the patented Jones design * * * It operates at 30 degrees lower temperature than any other type of nozzle.

The aforesaid statements and representations are false and misleading for the reason that the Lux extinguisher's oval-shaped horn referred to, at the time said statements and representations were made and in use, did not give a 10 percent to 15 percent longer range than a round horn, and the Jones design nozzle did not operate at 30 degrees lower temperature than any or all other types of nozzle.

Further items or values, among others, referred to and falsely and misleadingly represented in said catalogs or booklets as "exclusive Lux features," are the following:

One pull on the control of the Lux airplane fire extinguisher puts out the most severe fire that can occur about the engine of an airplane. No other device puts out fires both on the ground and during flight.

The Lux airplane fire extinguisher is the only device of any type approved by the Underwriters' Laboratories for protection against airplane engine fires.

The Lux extinguisher is the only extinguisher for airplane engine fires approved by the U. S. Navy and Army.

The aforesaid statements and representations are false and misleading for the reason that a similar airplane fire-extinguishing system that puts out fires both on the ground and during flight was and is offered for sale by a competitor, and competing fire extinguishers were and are approved by the Underwriters' Laboratories, and by the United States Navy and the United States Army for protection against airplane engine fires.

PAR. 4. In the further course and conduct of respondent's aforesaid business, by means of letters written and sent through the mails to prospective purchasers, respondent has falsely, misleadingly, and unfairly represented and disparaged competitors and the merit of competing products. Demonstrative of said representations and disparagement by respondent are the following statements:

The C-O-Two units have been in existence only about two years, with the result that they are still having difficulty overcoming problems that Kidde encountered and overcame 8 or 10 years ago.

Neither of our competitors have a local engineer available, nor do they carry a supply of parts for emergency use either in Chicago or St. Louis.

The aforesaid representations were and are false and misleading and an unfair disparagement of respondent's competitors and competing

products, particularly the product of the C-O-Two Company, in that the C-O-Two product had been in existence more than two years, said competitor was having no difficulties which respondent had previously overcome, and the said competitor had a direct factory warehouse branch and was equipped for emergency purposes at warehouses in the city of Chicago, Ill.

PAR. 5. The use by respondent of the aforesaid false, misleading and disparaging statements and representations has had and now has the capacity and tendency to mislead and deceive purchasers and prospective purchasers of fire-extinguishing equipment and apparatus into the false and erroneous belief that said statements and representations were and are true, and to cause them to purchase said products in reliance upon such erroneous belief.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on Aug. 7, 1939, issued and subsequently served its complaint in this proceeding upon the respondent, Walter Kidde & Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by Colladay, Colladay & Wallace, counsel for the respondent, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed; and the Commission, having duly considered the same 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, Walter Kidde & Co., Inc., is a corporation, doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 140 Cedar Street in the city of New York, State of New York, and with a factory located in the city of Bloomfield, State of New Jersey. Said respondent is now, and for several years last past has been, engaged in the business of manufacturing, offering for sale, and selling a line of fire-fighting and fire-extinguishing equipment, including carbon-dioxide fire-extinguishing apparatus having the trade name "Lux," in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent has been continuously in business since its organization in 1917 and is a general contractor, as well as a manufacturer and seller of fire-extinguishing apparatus. Its carbon dioxide fire-extinguishing apparatuses are manufactured by respondent at its factory in Bloomfield, N. J.

In the course and conduct of its aforesaid business, respondent causes said products, when sold, to be shipped from its aforesaid places of business in the States of New York and New Jersey to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with firms, partnerships, and individuals also engaged in the sale and distribution of fire-extinguishing equipment and apparatus in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business and in soliciting the sale of and selling its products, particularly its carbon dioxide fire-extinguishing apparatus, respondent at various times and intervals from 1934 to 1937, inclusive, caused certain advertisements and sales promotion literature to be distributed and circulated to and among purchasers and prospective purchasers of said products in and throughout the various States of the United States, in which there appeared various false, misleading, and deceptive statements and representations, of which the following, among others, are typical:

1. That the respondent originated and pioneered the carbon dioxide method of fire extinguishing and that every important development of carbon dioxide equipment and technique has been accomplished by respondent's engineers.

2. That every basic improvement and every fire extinguisher involving carbon dioxide now on the market is a development of the respondent.

PAR. 5. Among the advertising and sales promotion literature used and circulated by respondent as aforesaid were certain undated catalogs or booklets containing illustrations, statements, and representations relative to respondent's carbon-dioxide fire extinguishers designated as "Lux," which booklets carried on the cover thereof the statement "108 EXTRA VALUES." The booklet so designated contains 108 numbered paragraphs describing various features of respondent's Lux extinguishers. By this means the respondent has represented that its carbon-dioxide fire extinguishers have 108 extra values or features which cannot be obtained in fire extinguishers sold and distributed by its competitors. In addition to this representation, the respondent has designated certain of these items as being exclusive features of the Lux fire extinguisher. Typical of some of the items referred to as such exclusive features are the following: .

1. That respondent's cylinders are drawn from plates instead of billets so that flow lines of the grain follow the contour of the cylinders.

2. That respondent's cylinders are made with spherical bottoms and domes, which shape provides the greatest strength with the least weight.

3. That respondent's cylinders are subjected to controlled heat treatment and tempering to produce uniform strength.

4. That the valves of respondent's extinguishers are fitted with recoil preventers.

5. That all Lux discharge horns use nozzles with orifices of the patented Jones design, which is the only nozzle that operates perfectly under all temperature conditions and permits lengthy discharge at low temperatures without freezing.

6. That discharge horns on all Lux portable extinguishers are nonconductors of electricity as the soft rubber grip on the horn covers all metal parts.

7. That no fire-extinguishing apparatus, device, or equipment other than the respondent's will put out airplane fires both on the ground and during flight.

8. That respondent's equipment is the only fire-extinguishing equipment for airplane-engine fires approved by the United States Army and Navy.

PAR. 6. In addition to the above false and deceptive statements and representations, the respondent has also, by means of letters written and sent through the mails to prospective purchasers, falsely, misleadingly, and unfairly misrepresented and disparaged competitors and the merit of competing products. Typical of such disparaging statements and representations are the following:

1. That the fire-extinguishing equipment of the C-O-Two Fire Equipment Company, one of its competitors, has been in existence for only two years, with the result that it is still having difficulty overcoming problems that the respondent encountered and overcame eight or ten years ago.

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2. That respondent's competitors do not carry a supply of parts for emergency use in either Chicago or St. Louis.

PAR. 7. The respondent discontinued practically all the advertising representations hereinabove referred to after its attention was directed to the objectionable features by the investigation of the case by the Federal Trade Commission and are not now being used by the respondent.

PAR. 8. The foregoing statements and representations appearing in respondent's various advertising, its booklets, and various correspondence as hereinbefore described are grossly exaggerated, false, and misleading. Respondent has not originated or pioneered the carbon-dioxide method of fire extinguishing and has not developed every important improvement in carbon-dioxide equipment and technique. Carbon dioxide fire-extinguishing apparatuses are filled with carbon-dioxide gas and liquid carbon dioxide. A pipe extends from the release valve into the cylinder containing the gas and liquid. When the valve is opened the pressure of the gas in the cylinder or container forces the liquid carbon dioxide through this piping. At the time the liquid enters the discharge nozzle and contacts the air, it expands, and as it reaches the end of the nozzle, refrigeration commences and the liquid expands into the air in the form of carbon dioxide "snow." This snow absorbs heat rapidly and in so doing reduces the oxygen content of the air to such an extent that there is not enough oxygen to support combustion. The result, in effect, is suffocation and extinguishment of the fire to which the snow is applied.

PAR. 9. The practical development and use of carbon dioxide as a fire extinguisher involved problems in mechanics. The first and most difficult of these problems was to secure discharge from the container without freezing at the point of discharge with its consequent prevention of further discharge. The invention of Franz Johan Henrik Rustige, a Swedish engineer, was designed to accomplish this result. At that time Rustige was chief engineer of Aktiebolaget Lux Company of Stockholm, Sweden, and Patent No. 1,335,394, covering said invention, was issued to said company on March 30, 1920. The said inventor has never been in the employment of the respondent herein; but in 1923 license arrangements were consummated with the aforesaid Swedish company, whereby respondent acquired the right to use the aforesaid patent and invention. Since that time respondent has used said invention and the word "Lux" as a trade name for its carbon dioxide fire extinguishers. Respondent has at no time acquired the assets and business of the aforesaid Swedish Lux Co. nor become successor thereto. Respondent, however, did acquire the Swedish Lux

Co.'s entire right, title, and interest in the use of the name "Lux" in connection with all business (excepting only Norwegian), relating to the employment of carbonic acid in the extinguishing of fires.

The Lux System as marketed by Aktiebolaget Lux Co. was very primitive by comparison with the present product of respondent, and had only a limited application in extinguishing fires. In January and February, 1924, respondent's chief engineer (now its senior vice president), through the exercise of inventive faculties, conceived two major improvements in the original Lux System, namely, a means for discharging carbon dioxide in large quantities without danger of freezing and a method of gang releasing a plurality of containers of carbon dioxide for rapid and simultaneous discharge. These two inventions greatly expanded the use of the original Lux System of carbon-dioxide fire extinguishing, and form, to a large extent, the basis of present day carbon dioxide fire-extinguishing methods.

PAR. 10. Respondent began its development work on pressure operated fluid release devices in 1925 and 1926. Respondent contends that it had no knowledge of any patents of C-O-Two Fire Equipment Co. relating to pressure operation of fluid release devices until declarations of interferences by the Patent Office on April 18, 1930, and July 3, 1930, but in order to continue its use of pressure operated apparatus, respondent, on December 12, 1930, entered into a licensing agreement with C-O-Two Fire Equipment Co., a California corporation and competitor of respondent, whereby respondent was licensed to, and did, employ and use said inventions and patent rights and applications for patents owned by C-O-Two Fire Equipment Co. The patents and applications for patents referred to in said licensing agreement relate to the art of fire extinguishing with the use of carbon dioxide and include important inventions relating to fluid pressure control of carbon-dioxide cylinders and appurtenances for use in connection therewith.

On December 12, 1930, a settlement agreement was entered into by and between C-O-Two Fire Equipment Co., a California corporation, competitor of respondent, and Walter Kidde & Co., Inc., respondent herein, whereby there was settled in favor of said C-O-Two Fire Equipment Co. certain important U. S. Patent Office interferences between applications of C-O-Two Fire Extinguishing Co. covering important features of the C-O-Two Fire Extinguishing Co.'s carbon-dioxide systems, and under which the respondent sought and obtained a license under the agreement of December 12, 1930, above referred to.

PAR. 11. Another important problem in the development of carbon-dioxide fire extinguishers was solved by the invention of a discharge horn or nozzle which produces a denser and wider coverage and concen-

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tration of the snow at the end of the discharged stream. The inventor, Henry R. Minor, was never in respondent's employ, but, at the time of said invention, was an engineer and employee of General Carbonic Co., a manufacturer of carbonic acid gas, which was co-operating with respondent in 1923 and 1924 by permitting respondent to conduct experiments at General Carbonic Co.'s plant in Long Island City, with the idea of increasing its sales of gas. The record shows that Minor applied for a patent on his invention on Sept. 26, 1925, that he assigned his invention to General Carbonic Co., and that the latter company assigned the invention to Fyre-Freez Corporation in 1927. On or about July 1, 1929, respondent by purchase acquired all of the assets and business of the said Fyre-Freez Corporation, including the ownership of the said Minor application. Patent No. 1,760,274, based on said Minor application, was issued to respondent in 1930.

The Minor U. S. Patent 1,760,274 was acquired following an interference declared between the application of Minor and an application of one of respondent's employees, George Crosby Hiss, to whom U. S. Patent 1,760,359 was issued. The work of Hiss began in the spring of 1923, while Minor's work had started about 6 months earlier, and, it is respondent's contention that Minor's developments and achievement were wholly unknown to Hiss until the aforesaid interference proceedings in May 1929. Respondent's development of the form of portable extinguisher discharge horn, which is still in use, was completed about 1 year before the interference was filed in May 1929.

PAR. 12. During the year 1936, and for approximately 5 years prior thereto, and at present, the inventions covered by the aforesaid Patents No. 1,335,394 and No. 1,760,274 have been and are used by respondent's competitors C-O-Two Fire Equipment Co. and American LaFrance & Foamite Corporation by virtue of license agreements between respondent and said competitors.

PAR. 13. The word "extra" as used by respondent in its advertising booklets bearing the statement "108 EXTRA VALUES," both by dictionary definition and as understood by the purchasing public, means and signifies something beyond that which is due, usual, necessary, or to be expected. The statement "108 EXTRA VALUES" has the tendency and capacity to induce in the minds of prospective purchasers of carbon-dioxide fire extinguishers the erroneous belief that the values or features referred to were and are extra and in addition to or beyond those which were or are due, usual, necessary, or to be expected or found in carbon-dioxide fire-extinguishing apparatus. As a matter of fact, as of the time said booklets were in

circulation, the majority of the values or features referred to were and are usual or necessary accompaniments of carbon-dioxide fire-extinguishing apparatus, and the same were and are not exceptional to respondent's product, but were and are to be found in the products of respondent's competitors.

PAR. 14. The exclusive features claimed by the respondent for its carbon-dioxide fire extinguishers as hereinbefore set out, were not in fact peculiar to respondent's apparatus but, instead, appear in extinguishers sold by respondent's competitors. The cylinders of the carbon dioxide fire-extinguishing apparatus of respondent's competitor C-O-Two Fire Equipment Co. were also drawn from plates instead of billets. The fire-extinguishing apparatus of respondent's competitor American LaFrance & Foamite Corporation was made with spherical bottoms and domes. 1,100 cylinders of this type were sold by said competitor to the United States Navy Department on or about Sept. 16, 1936. All manufacturers of carbon dioxide fire-extinguishing apparatus subjected their cylinders to controlled heat treatment and tempering producing cylinders of uniform strength and as required under regulations of the Interstate Commerce Commission. During the year 1936, and prior thereto, the "recoil preventer" was being used by respondent's competitors, although covered by reissue Patent No. 18,839, issued to respondent May 23, 1933. From and after Mar. 31, 1936, the nozzle equipment on respondent's apparatus was not of the "Jones design," but a nozzle of said design was then, and since has been, used by respondent's competitors. During said year, and theretofore, the soft rubber grips on the discharge horn covering metal parts was also an accompaniment of the apparatus of respondent's competitor C-O-Two Fire Equipment Co. Respondent's fire-extinguishing equipment is not the only equipment which will put out airplane fires both on the ground and during flight, and respondent's equipment is not the only fire-extinguishing equipment for airplane fires approved by the United States Army and Navy. In fact, the fire-extinguishing apparatus of respondent's competitor Air Cruisers, Inc., has been approved by the United States Navy and Army since July 17, 1935, as fire-extinguishing apparatus which will extinguish airplane-engine fires both on the ground and during flight.

PAR. 15. Respondent's competitor C-O-Two Fire Equipment Co. has been in existence since the year 1925. During the year 1936, and prior thereto, said competitor had a direct factory warehouse branch and salesmen operating under its Chicago district manager, and at its said branch warehouses carried a substantial stock of extinguishers and parts.

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PAR. 16. The use by the respondent of the aforesaid false, misleading, and disparaging statements and representations had the capacity and tendency to, and did, mislead and deceive purchasers and prospective purchasers of fire-extinguishing equipment and apparatus into the false and erroneous belief that said representations were true, and caused them to purchase respondent's products, thereby unfairly diverting trade to respondent from its competitors who are also engaged in the sale and distribution of fire-extinguishing equipment in commerce among and between the various States of the United States.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition 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 the respondent, and a stipulation as to the facts entered into between the respondent herein by its counsel, Colladay, Colladay & Wallace, and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, which provides, among other things, that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs; 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, Walter Kidde & Co., Inc., 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, and distribution of fire-extinguishing equipment in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that the respondent originated or pioneered the carbon-dioxide method of fire extinguishing or that respondent has developed every important improvement in carbon-dioxide equipment and technique.

2. Representing directly or by implication that all fire-extinguishing equipment involving carbon dioxide and every basic improvement

thereof are developments of the respondent or that any extinguishing equipment or improvement thereof not originated and designed solely by the respondent is a development of the respondent.

3. Representing directly or by implication that any feature or value of respondent's fire-extinguishing equipment is an exceptional or exclusive feature of respondent's fire-extinguishing equipment either through the use of the term "extra values" or any other term of similar import or meaning to designate such features, or in any other manner, when such features so claimed to be exceptional or exclusive are in fact found in, and form a part of, fire-extinguishing equipment other than that sold by the respondent.

4. Representing directly or by implication that no fire-extinguishing apparatus, device, or equipment other than respondent's will put out airplane fires both on the ground and in flight.

5. Representing directly or by implication that respondent's equipment is the only fire-extinguishing apparatus approved by the United States Army or Navy as equipment for use in extinguishing airplane fires both on the ground and in flight.

6. Making or causing to be made in any form or manner any false or disparaging statements with reference to the length of time that any competitor has been in business or the length of time that any competitive equipment has been on the market.

7. Making or causing to be made in any form or manner any false or disparaging statements with reference to the ability of any competitor to supply parts for emergency use or representing that any competitor does not have warehouse facilities for supplying parts for emergency use when such warehouse facilities are in fact in existence.

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

A. & M. KARAGHEUSIAN, INC.

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

Docket 4305. Complaint, Sept. 6, 1940—Decision, Mar. 29, 1943

Where a corporation, with foreign offices in Tientsin, China, and throughout Persia, engaged in the domestic manufacture, importation, and competitive interstate distribution and sale of various rugs and carpets, which resembled in design, color, and general appearance genuine Orientals, and included as its leading and most expensive domestic line its "Gullistan" rugs, in the more recent labeling of which it more or less prominently displayed their American manufacture, and in the advertising of which it discussed its patented process and method employed therein—

- (a) Made use of words "Iranian" and "Hindustan" to designate certain rugs, the faces of which had many points of resemblance in design, color, and general appearance to the long esteemed, distinctive hand-built genuine Orientals, commonly designated by geographical or tribal names indicative of their Oriental origin, and thereby—withstanding labels which almost indiscernibly displayed the words "Made in U. S. A." or "An American product," and "Made by the makers of Gullistan,"—represented that its said products were true Orientals in every respect, made by hand in Persia (or Iran) or in India (or Hindustan);

When in fact said domestic products were woven by it on power looms; and, while "washed" to impart the desirable luster or sheen of the genuine Oriental, similarly acquired, they were not so woven that colors and patterns, as in the genuine, showed through, but had the hard or white back common to Wilton and Axminster manufacturing methods;

- (b) With capacity and tendency to cause purchasing public to believe that certain of its aforesaid "washed" domestic machine-made rugs, colors, and patterns of which showed through, and which, labeled as above described, had, as aforesaid, many other points similar to true Orientals, were such, made use, as designation thereof, of coined word "Mirastan," distinctive suffix of which it shared with names of such genuine Orientals as "Beluchistan," "Kurdistan," "Laristan," "Cabistan," and "Daghestan"; and
- (c) Made use of word "Reproduction" or "Reproductions" in advertising copy furnished by it to dealers in which were contained such statements as "Gullistan—the world famous Oriental reproductions that most people cannot tell from a hand woven Oriental rug"; "Superb Persian reproductions * * * Hindustan rugs"; "Persian reproductions * * * the Iranian rug"; "Mirastan Oriental reproductions * * * see Mirastan and compare it with the costliest Persian rugs. You will be amazed at the similarity";

The facts being that while some of such rugs followed as closely as possible in power-loom weaving the colors and patterns of original Orientals, they did not do so exactly, while others were adaptations and combinations of colors, motifs, and patterns found in genuine Orientals; the manufacture thereof did not involve the copying of the color and design of any particular single