

IN THE MATTER OF

J. A. STRANSKY AND L. G. STRANSKY, TRADING AS
J. A. STRANSKY MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 1612. Complaint, June 10, 1937¹—Decision, Apr. 28, 1943*

Where an individual, engaged in the manufacture and competitive interstate sale and distribution of a mechanical auxiliary automotive device described as a vaporizer and decarbonizer and designated as "Stransky Vaporizer"; through advertisements in circulars, pamphlets, newspapers, and other publications—

- (a) Represented that the use of said device would substantially reduce gasoline consumption 25 percent or more, and increase mileage per gallon of gas; remove carbon from the parts of an automobile engine which are injuriously affected thereby; reduce spark-plug troubles, give power and speed to the engine, and prevent overheating of automobile engines; and cause a motor to start more easily and eliminate oil pumping;

The facts being that the device in question, performance of which was limited to the admission of unscreened air into the automobile manifold, thereby leaning the mixture entering the engine, was not capable, as established by Bureau of Standards tests and expert testimony, of making any improvement in automobile engine performance over that obtainable with proper carburetor adjustment alone; and it would not accomplish the results claimed therefor, but might actually have adverse or harmful effects; and

- (b) Represented that prospective purchasers could obtain a certain number of respondent's devices free or could obtain a pen-and-pencil set free by purchasing a specified number of his devices, and that they could test said device without charge before buying;

The facts being prospective purchasers were required to pay purchase price before being permitted to test device, and said so-called free goods formed part of a combination offer and their cost was included in the price of the device required to be purchased;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such representations were true, and of inducing it to purchase respondent's products because of such mistaken belief, whereby trade was diverted unfairly to him from his competitors who truthfully advertised their products:

He'd. That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and of competitors, and constituted unfair methods of competition.

As respects the truth of representation that a certain device to be attached to the intake manifold of an automobile, function of which was to introduce additional air, would result in more economical operation and improved performance and running condition; tests as to the results obtained, according to the testimony of certain witnesses, had little or no probative value,

¹ Amended and supplemental.

it appearing that none of them were made under comparable test conditions, that there was no evidence that the carburetor was set at maximum economy in making the tests with and without the device, and that the conditions under which the road tests were performed included many variable factors, and it appearing further that there was nothing in the tests or in the evidence in connection therewith which indicated that the device was capable of making any improvement in automobile engine performance over that obtainable without it by adjustment of the carburetor.

Before *Mr. Randolph Preston* and *Mr. Lewis C. Russell*, trial examiners.

Mr. Floyd O. Collins, *Mr. S. Brogdyne Teu, II*, and *Mr. Carrel F. Rhodes* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondents.

AMENDED AND SUPPLEMENTAL COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that J. A. Stransky and L. G. Stransky, copartners, trading under the firm name and style of J. S. Stransky Manufacturing Co., hereinafter referred to as respondents, have been, and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, J. A. Stransky and L. G. Stransky, are copartners, trading under the firm name and style of J. A. Stransky Manufacturing Co., having and maintaining their principal place of business in the city of Pukwana, in the State of South Dakota.

PAR. 2. Respondents are now, and have been for several years last past, engaged in the manufacture, transportation, sale, and distribution in commerce among and between the various States of the United States of a mechanical device described as a vaporizer and decarbonizer and designated Stransky Vaporizer. Respondents cause said product, when sold, to be shipped and transported in interstate commerce from their place of business, located in the State of South Dakota, to purchasers thereof located at various points in States of the United States other than the State of South Dakota. Respondents now maintain and have at all times mentioned herein maintained a constant current of trade in said product in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. Respondents, in the course of and conduct of their business as aforesaid are now, and at all times herein referred to have been,

in substantial competition with other partnerships and firms, individuals, and corporations likewise engaged in the sale and distribution in commerce among and between the various States of the United States of other mechanical appliances and devices which are manufactured, advertised, recommended, and sold for substantially the same purpose and use for which respondents' product is advertised and sold.

PAR. 4. Respondents, in the course of and conduct of their business as aforesaid, and for the purpose of inducing individuals to purchase said Stransky Vaporizer, have caused advertisements to be inserted in newspapers, magazines, and other periodicals of general circulation throughout the United States, and have printed and circulated throughout the several States of the United States, through the United States mails and otherwise, to customers and prospective customers, certain advertising literature in all of which respondents have caused the firm name and name of said product to be prominently and conspicuously displayed and in which the following statements are made:

You can test it—prove it—without the loss or risking of one penny of your money.

Just think, 10 New Improved Stransky Gas Economizers free.

It is not necessary for you to risk one penny to prove that the "New Improved" Stransky is what I claim.

Saves 25% or more gasoline.

Reduces carbon.

Reduces spark plug trouble.

Gives more power and speed.

Helps prevent overheating.

Saves them many times its price on gas bills.

I will send you your first order of 100 Economizers at a special price of 70¢ each or \$70.00 and not only that, but will give you 10 extra free.

With the above order I will also include 2 Extra Economizers free (which makes you \$41.00 profit when sold by you) and I will also give you a beautiful fountain pen and pencil set with memorandum book, (a \$7.50 value) put up in a very neat box Absolutely Free if you act now.

PAR. 5. All of said statements as above set out, together with many other similar statements appearing in respondents' advertising and literature, purport to be descriptive of respondents' product, Stransky Vaporizer. In all of the respondents' advertising matter and literature, the respondents represent through the statements herein set out and through other statements of like import and effect that said vaporizer will reduce fuel consumption 25 percent or more; will reduce carbon; will reduce spark plug trouble; will give more power and speed to motors; will prevent overheating; will cause a motor to start easier; will eliminate oil pumping; will enable an automobile to run from 37 to 57 miles on 1 gallon of gasoline; that a prospective

purchaser can test said vaporizer without any risk; that with the purchase of a certain number of vaporizers, the purchaser is given a certain number of vaporizers free; and that pen and pencil sets are given free with the purchase of a given number of vaporizers.

PAR. 6. The claims and representations made by the respondents with respect to the efficacy of respondents' product, Stransky Vaporizer, and the results to be obtained from the use of said vaporizer, and the representations with reference to the free goods are grossly exaggerated, false, and misleading. In truth and in fact, respondents' product, Stransky Vaporizer, does not make possible any appreciable improvement in fuel economy. Said devise is not capable of making any improvement in engine performance over that normally obtainable without the use of said device. No beneficial results can be obtained through the use of said device that cannot be obtained through the proper adjustment of the original appliance or appliances already upon and forming a part of motors. The purchaser is not permitted to test said device without any risks, but is required to pay for such device before testing same. The articles advertised as being given away free are not in truth and in fact given away free, but the cost thereof is included in the purchase price of the articles purchased.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents in designating and describing the product, Stransky Vaporizer, and the results to be obtained from the use of said device, as hereinabove set out, in offering for sale and selling said device, were and are calculated to, and had, and now have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said claims and representations are true. As a direct consequence of said mistaken and erroneous beliefs, induced by the acts and representations of the respondents as hereinabove set out, a number of the purchasing public have purchased respondents' product with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in manufacturing, selling, and distributing vaporizers and decarbonizers and who do not misrepresent the efficacy or value of their respective products. As a result of the unfair acts, and false and misleading representations of the respondents, injury has been, and is now being done by respondents to competition in commerce among and between the various States of the United States and the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondents have been, and are all to the prejudice and

injury of the public and respondents' competitors as hereinabove alleged. Said acts, practices, and representations constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 25, 1929, issued and subsequently served its complaint in this proceeding on the respondents, J. A. Stransky and L. G. Stransky, copartners, trading under the firm name and style of J. A. Stransky Manufacturing Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the filing of respondents' answer to said complaint, the Commission, on June 10, 1937, issued, and subsequently served, its amended and supplemental complaint upon said respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act. Thereafter, testimony and other evidence in support of and in opposition to the allegations of said amended complaint were introduced before trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on said amended and supplemental complaint, testimony, and other evidence, report of the trial examiners upon the evidence and supplemental report of Trial Examiner Lewis C. Russell upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; 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. Respondents, J. A. Stransky and L. G. Stransky, were formerly copartners, trading under the firm name and style of J. A. Stransky Manufacturing Co. On or about February 17, 1939, during the pendency of this proceeding, respondent, J. A. Stransky died, and subsequent to that time respondent, L. G. Stransky, as an individual, has continued to trade under the firm name

and style of J. A. Stransky Manufacturing Co., having his principal place of business in the city of Pukwana, in the State of South Dakota.

PAR. 2. Respondent, L. G. Stransky, is now, and for several years last past has been, engaged in the manufacture and in the sale and distribution in commerce among and between the various States of the United States of a mechanical device described as a vaporizer and decarbonizer, designated as "Stransky Vaporizer." Respondent causes said device, when sold, to be shipped and transported from his place of business in the State of South Dakota 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 device in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of his said business, said respondent, L. G. Stransky, prior to February 17, 1939, as a copartner, with J. A. Stransky, and subsequent thereto, as an individual, trading as J. A. Stransky Manufacturing Co., has been in substantial competition with other partnerships and individuals and with corporations likewise engaged in the sale and distribution in commerce among and between the various States of the United States of other mechanical appliances and devices which are manufactured, advertised, recommended, and sold for substantially the same purpose and use for which respondent's product is advertised and sold.

PAR. 4. In the course and conduct of his said business as aforesaid and for the purpose of inducing the purchase of his said device, respondent has made false, deceptive, and misleading statements and representations concerning his said device in circulars and pamphlets and in advertisements inserted in newspapers and other publications, all of which have been circulated between and among the various States of the United States. Among and typical of such representations made by the respondent are the following:

1. That the use of respondent's device will substantially reduce gasoline consumption 25 percent or more and increase mileage per gallon of gas.

2. That the use of said device will remove carbon from the parts of an automobile engine which are injuriously affected thereby.

3. That the use of said device will reduce spark plug troubles, give power and speed to the engine, and prevent overheating of automobile engines.

4. That the use of said device will cause a motor to start more easily and eliminate oil pumping.

5. That prospective purchasers can obtain a certain number of respondent's devices free or can obtain a pen-and-pencil set free by purchasing a specified number of respondent's devices.

6. That prospective purchasers can test respondent's device without charge before buying.

PAR. 5. Based upon tests made by the National Bureau of Standards and the expert testimony introduced in this case, the Commission finds that the use of respondent's device will not substantially reduce gasoline consumption, remove carbon or reduce carbon formation, reduce spark plug trouble, give power and speed to the engine, prevent overheating, eliminate oil pumping, or cause the motor to start easier and that said device is not capable of making any improvement in automobile engine performance over that obtainable without such device.

PAR. 6. Respondent's device is a mechanical contrivance attached to the intake manifold of an automobile motor between the carburetor mixing bowl and the lead into the combustion chamber and the cylinders. This device is made in different sizes and forms to fit various types of cars, but all models of respondent's device operate on the same general principle. In the operation of an automobile engine when the gas passes from the mixing compartment proper of the carburetor through the intake manifold into the combustion chamber, a certain suction or vacuum is created. This suction or vacuum raises the small bearings or balls located in respondent's device, thus permitting air to enter the ingoing mixture of gasoline and air. As the suction in the fuel carburetor system increases, the balls or bearings in this device are raised higher from their seat, thus permitting a greater quantity of air to be taken into the combustion chamber of the motor. In a test made by the National Bureau of Standards it was determined that a Chevrolet engine operating at full throttle and 1,600 revolutions per minute uses approximately 100 cubic feet of air per minute. Under the same conditions respondent's device supplied only 0.4 cubic feet of air per minute, which is negligible, being less than one-half of 1 percent of the total amount of air that the engine was using. Consequently, respondent's device has no effect upon available power or economy at full throttle, and the tests made over the full range of mixtures on which an engine would run indicate that the air supplied by respondent's device makes no improvement in performance which cannot be obtained without such device by suitable carburetor adjustment.

PAR. 7. The purpose of a carburetor is to supply to the automobile engine the proper mixture of gasoline and air so that the motor will give the maximum power for the minimum amount of gasoline. The

carburetor controls both the intake of air and the intake of gasoline. Respondent's device has no effect upon the intake of gasoline but merely increases the intake of air, dependent upon the vacuum condition which exists at the time.

If the carburetor is in perfect condition the additional air supplied by respondent's device is simply additional to that intended by the original adjustment upon the carburetor and to this extent negatives the operation of the carburetor in connection with the engine of the car. If the carburetor in a car is not in perfect condition or the air intake passages are clogged with dirt, respondent's device would supply additional air and temporarily give a leaner mixture than would be obtained from a badly fouled carburetor. This, however, would be a hit-and-miss arrangement at best, as satisfactory results could be obtained merely by cleaning the carburetor or adjusting it. Since the performance of respondent's device is limited to the admission of air into the manifold and thereby leaning the mixture entering the engine, nothing can be accomplished by this device that cannot readily be accomplished merely through adjustment of the carburetor. If the carburetor is properly adjusted, the best performance in starting the motor will be obtained. The introduction of additional air by means of respondent's device, if sufficient to have any effect, will adversely affect the starting of the motor since the leaning of the mixture interferes with the action of the carburetor. Consequently, respondent's device is of no value in assisting or causing the motor to start when the carburetor is in proper adjustment, and in cases where carburetor is out of adjustment more effective results can be obtained by adjustment of the carburetor than by the use of respondent's device.

PAR. 8. Carbon in an engine is the formation of gum, unburned oil, and dirt in the engine and cylinders. Since the sole property of respondent's device is to increase the intake of air and lean the mixture used by the engine, it will not have any effect on removing carbon so formed, but, instead, is more likely to increase the formation of such carbon since this device has no screen or filter and will draw dirt and dust through the jet, which will be carried through the manifold and into the engine and possibly deposited on the walls, thereby aiding in the building up of carbon.

PAR. 9. "Spark plus trouble" is a general term which might apply to any defect or condition of spark plugs. There is nothing in either the tests conducted on this device or in the testimony of the various experts which indicates that a device such as the respondent's, the sole performance of which is limited to the admission of air into the manifold of an automobile engine, has any effect upon any spark plug trou-

ble. The amount of air supplied by respondent's device and the possible leaning of the mixture resulting therefrom has no effect upon the heating of the motor and will not prevent overheating. The only possible effect that respondent's device might have upon oil pumping would be to increase, rather than to remedy, this defect. This device permits dirty air to enter the combustion chamber of the engine since no filter is attached which cleans such air. In permitting this air to enter the combustion chamber, a certain amount of grit is likewise likely to enter. This grit if it accumulates over a period of time might be enough to act as an abrasive, causing the cylinder walls, pistons, and rings to wear more rapidly than if respondent's device were not used. Such wear would have a tendency to increase oil consumption, rather than to decrease it. There is nothing in either the tests or the expert testimony which permits the conclusion that the use of respondent's device gives more power to the motor or increases its speed. Its performance, if any, is limited to idling and low speeds, and, if the carburetor is adjusted to provide a lean mixture for either idling or low speed, the use of this device would cause the car to stall and operate in a jerky manner at low speed.

PAR. 10. Certain witnesses for the respondent testified as to results obtained through tests of respondent's device. None of these tests were made under comparable test conditions. There is no evidence that the carburetor was set at maximum economy in making the tests with and without respondent's device. The conditions under which the road tests were made included many variable factors, which give to such tests little or no probative value. Furthermore, there is nothing in these tests or in the evidence in connection therewith which indicates in any way that respondent's device is capable of making any improvement in automobile engine performance over that obtainable without such device by adjustment of the carburetor.

PAR. 11. Prospective purchasers of respondent's device were not permitted to test said devices without charge or risk before buying, as they were required to pay the purchase price for said device before being permitted to test it. Purchasers of respondent's devices do not obtain a certain number of such devices free or obtain a pen-and-pencil set or other articles of merchandise free, but, instead, the cost of such devices or merchandise is included in the purchase price of the devices required to be purchased, and such so-called free goods form part of a combination offer.

PAR. 12. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and

mistaken belief that such statements and representations are true, and induces a substantial portion of the purchasing public to purchase respondent's products because of such erroneous and mistaken belief. As a result, trade has been diverted unfairly to the respondent from his competitors in said commerce who truthfully advertise their products.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of respondents' 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 amended complaint of the Commission, answer of the respondent, testimony, and other evidence in support of and in opposition to the allegations of the complaint taken before trial examiners of the Commission theretofore duly designated by it, report of the trial examiners upon the evidence and supplemental report of Trial Examiner Lewis C. Russell upon the evidence and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that respondent, L. G. Stransky, trading as J. A. Stransky Manufacturing Co., has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, L. G. Stransky, an individual, trading as J. A. Stransky Manufacturing Co., and his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act of his device designated as "Stransky Vaporizer," or any other device of substantially similar construction or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Representing directly or by implication that any greater reduction in gasoline consumption or improvement in automobile engine performance can be obtained through the use of respondent's device than that which may be obtained without such device by adjustment of the carburetor.

Order

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2. Representing directly or by implication that respondent's device will remove carbon from the parts of an automobile engine or reduce formation of carbon.

3. Representing directly or by implication that respondent's device will reduce spark-plug trouble, give power or speed to an automobile engine, or prevent overheating of such engine.

4. Representing directly or by implication that respondent's device will cause a motor to start more easily, eliminate oil pumping, or reduce oil consumption.

5. Using the term "free" or any other term of similar import or meaning to designate, describe, or in any way refer to articles of merchandise regularly included in a combination offer with respondent's devices or other merchandise.

6. Representing directly or by implication that respondent will permit prospective purchasers to test his device without charge before buying, when prospective purchasers are required to pay the purchase price in advance before being permitted to test such device.

It is further ordered, That the complaint be dismissed as to respondent, J. A. Stransky, deceased.

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

Syllabus

IN THE MATTER OF
JACOB SIEGEL COMPANY

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

Docket 3403. Complaint, May 16, 1940¹—Decision, Apr. 28, 1943

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of men's clothing, including overcoats and topcoats made of its "Alpacuna" fabric which had a face or pile composed of about 50 percent alpaca, 20 percent mohair, and 30 percent wool, worked in the case of the overcoats but not of the topcoats, into a cotton backing comprising about 30 percent of the entire fabric—

- (a) Represented that such fabric was made entirely of wool through statements and depictions in advertising matter included in swatch books which it supplied to dealers and which were frequently displayed by them to the purchasing public, and through advertising copy furnished to dealers for their use in advertising its said coats in their trade areas, of which they made frequent and repeated use;
- (b) Represented, as aforesaid, that its said fabric contained guanaco hair and that the Angora goat hair used therein was imported from Turkestan or some other Asiatic country;

The facts being that, while the fabric used by it in its topcoats was a wool and hair material, such was not true as to the overcoats in which the aforesaid cotton backing constituted about 30 percent of the fabric, and while in its more recent advertising it referred to said fact, such reference was usually in smaller and less conspicuous type than other portions of the advertisement, and, the overcoats being full-lined, the prospective purchaser had little opportunity to observe such backing when examining the garment; guanaco was used in neither coat, and presence thereof in cases in which guanaco hairs might accidentally find their way into shipments of alpaca was negligible in amount; and such Angora goat hair or mohair as was used therein was not imported from any foreign country but was a domestic product obtained from Texas; and

- (c) Made use of word "Alpacuna" to designate its aforesaid fabric with result of falsely implying that its coats contained vicuna fiber;

With tendency and capacity to deceive a substantial portion of the purchasing public with respect to the fiber content of such coats and the origin of the materials used therein, and, as a result, to cause it to purchase substantial quantities thereof:

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.

Before *Mr. Edward E. Reardon*, trial examiner.

Mr. George W. Williams for the Commission.

Montgomery & McCracken, of Philadelphia, Pa., for respondent.

¹ Amended.