

IN THE MATTER OF
FREEDOM CHEMICAL 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 4905. Complaint, Feb. 10, 1943—Decision, June 24, 1943

Where a corporation, engaged in interstate sale and distribution to jobbers, for resale to garages and service stations, of its "GO Below" antifreeze solution for automobile radiators, by means of advertisements in trade journals, folders, circular letters, streamers, and other advertising material, directly and by implication—

- (a) Represented falsely that its said product was a perfect permanent antifreeze for use in automobile and truck radiators, which contained a chemical called calcium bichlorinate, and which would not become gelatinous, gum up, crawl or seep, or cause any corrosive damage to automotive metals; that it was less corrosive thereto than ordinary tap water, and compared favorably in that respect with any known premium quality antifreeze sold in the United States; and that it was in a superior class from antifreeze solutions which had proven ruinous and costly in use;

The facts being that there is no such chemical as calcium bichlorinate, and product in question, which had a calcium chloride base, was inferior to antifreeze solutions with glycerin or alcoholic bases; caused seepage; was highly corrosive to automotive metals such as iron, steel, bronze, solder, copper, brass, and aluminum, and more so than tap water; and its other claims, noted above, were similarly false and misleading;

- (b) Represented that factual observations at the U. S. Bureau of Standards, Washington, D. C., on their tests of its product conducted simultaneously with tests of competitive products, substantiated all of its claims, and that said tests did not show any corrosion caused by its product to any cooling system metals and gaskets or rubber;

When in fact such observations did show corrosive effects on automotive metals used in the cooling system, on the distributor caps, ignition systems, and on water pumps on the engines; and

- (c) Falsely represented that its said product had been tested and approved by laboratories of Northwestern University, Purdue University, Firestone Tire and Rubber Co., Pittsburgh Plate Glass Co., and hundreds of other reputable commercial and university laboratories throughout the United States;

With effect of misleading and deceiving a substantial number of the purchasing public into the erroneous belief that such false representations were true, thereby inducing such public to purchase substantial quantities of the product in question:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Stanley & Smoyer, of Cleveland, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Freedom Chemical Co., 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. Freedom Chemical Co. is a corporation, organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 2021 N. B. C. Building, 815 Superior Avenue, East Cleveland, Ohio.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a so-called antifreeze solution designated "60 Below" for use in automobile radiators. Said product is sold to jobbers, garages, and service stations for resale to the public. Respondent causes its said product, when sold, to be transported from its aforesaid place of business in the State of Ohio to purchasers located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product 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 aforesaid business and for the purpose of inducing the purchase of its antifreeze product, "60 Below," the respondent has circulated and is now circulating among prospective purchasers throughout the United States, by United States mails, advertisements in newspapers and trade journals, by means of advertising folders, pamphlets, circular letters, streamers, and other advertising material, all of general circulation, many false statements and representations concerning its said product. Among and typical of such false statements and representations are the following:

THE PERFECT PERMANENT ANTI-FREEZE.

It is noncorrosive—completely antirust against all automobile metals.

It is nongelatinous—nongumous—will not crawl nor seep.

60 Below is not dangerously corrosive to automotive: iron, steel, bronze, solder, copper, brass, aluminum.

60 Below is less corrosive, on the whole, than tap water.

60 Below anti-corrosion performance compares favorably with any known premium quality anti-freeze marketed in the United States.

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We hold that 60 Below is far removed from the classification of those anti-freeze products which in the past have proven ruinous and costly in use.

L. H. LETTS, *Pres.*

FREEDOM CHEMICAL COMPANY

Cleveland, Ohio.

Reporting factual observations at U. S. Bureau of Standards, Washington, on their tests of our 60 Below. On November 11th three Ford motors under load, two in second gear, had already run more than 11,000 miles at 25 miles per hour, protected to zero degrees, operating temperature 176 degrees, continuous since October fifteenth, with the two national brands of permanent anti-freeze you know best simultaneously tested for comparison. Observation of performance of 60 Below on this mileage, which represents over the average one year normal driving, substantiating all our product claims, previous tests, and satisfactory consumer experience. As evidenced by these comparative U. S. Bureau of Standards tests, results show 60 Below does not corrode through any cooling system, metals, pumps, gaskets or rubber.

(Signed) R. EARL BURROWS

60 Below has been tested and approved by the laboratories of Northwestern University, Purdue University, Firestone Tire and Rubber Company, Pittsburgh Plate Glass Company—we could go on with hundreds more of such reputable commercial and universal laboratories who are interested in the development and progress of these, our United States, and its people.

Complete absence of corrosion of any kind * * * A safe unexcelled anti-freeze.

Calcium bichlorinate in plain English spells 60 Below permanent anti-freeze.

Through the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, the respondent has represented directly or by implication that its product, "60 Below," is a perfect permanent antifreeze for use in automobile and truck radiators; that it will not become gelatinous, will not gum up, will not crawl or seep; that it will not cause any corrosive damage to automotive metals, such as iron, steel, bronze, solder, copper, brass, and aluminum; that it is less corrosive to automotive metals than ordinary tap water; that its anticorrosive qualities compare favorably with any known premium qualities antifreeze marketed and sold in the United States; that it is in a superior class from other antifreeze solutions which have proven ruinous and costly in use; that factual observations of tests being conducted by U. S. Bureau of Standards at Washington, D. C., of respondent's product simultaneously conducted with products of competitors substantiate all of respondent's claims for its product, and that said tests did not show any corrosion caused by said product to any cooling-system metals and gaskets or rubber; that its product, "60 Below," has been tested and approved by laboratories of Northwestern University, Purdue University, Firestone Tire & Rubber Co., Pittsburgh Plate Glass Co. and hundreds of other reputable, commercial, and universal laboratories throughout the United States; that its product contains a chemical called calcium bichlorinate.

PAR. 4. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. Respondent's product is not a perfect permanent antifreeze. Respondent's product is composed of a calcium chloride base and is inferior to antifreeze solutions containing glycerin or alcoholic bases. Said product causes seepage. It is highly corrosive to automotive metals such as iron, steel, bronze, solder, copper, brass, and aluminum. It is more corrosive than ordinary tap water. Said product's noncorrosive qualities do not compare favorably with other quality antifreeze solutions sold in the United States. It is not in a class to itself over other antifreeze products. Factual observations of tests conducted by U. S. Bureau of Standards on respondent's product simultaneously with tests on competing antifreeze solutions did not substantiate claims made by respondent for its product. Said tests showed corrosive effects on automotive metals used in the cooling system, on the distributor caps, ignition systems, and on water pumps on the engines used in said tests. There is no such chemical as calcium bichlorinate. Respondent's product is composed of calcium chloride. Respondent's product has not been approved after test at laboratories conducted by Northwestern University, Purdue University, Firestone Tire & Rubber Co., nor Pittsburgh Plate Glass Co.

PAR. 5. The use by the respondent of the foregoing false and misleading statements and representations disseminated as aforesaid has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and advertisements are true and to induce, and does induce, the public to purchase substantial quantities of respondent's product as a result of such belief.

REPORT, FINDINGS AS TO FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 10, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Freedom Chemical Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answer was filed by the respondent. A hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing a stipulation as to the facts was entered into between the attorney for the Commission and the attorney for respondent and read into the record. This stipulation provides that the facts therein set forth shall be taken as the facts in this proceeding and in lieu of testimony in support of the allegations of

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the complaint or in opposition thereto. Respondent expressly waived the filing of a Trial Examiner's report upon the evidence. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and stipulation as to the facts (such stipulation having been accepted and approved by the Commission), 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Freedom Chemical Co. is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 2021 N. B. C. Building, 815 Superior Avenue, East Cleveland, Ohio.

PAR. 2. The respondent for more than 1 year prior to January 8, 1943, had been engaged in the sale and distribution of a so-called anti-freeze solution designated "60 Below" for use in automobile radiators. Said product was sold to jobbers for resale through garages and service stations to the public. Respondent caused its said product, when sold, to be transported from its aforesaid place of business in the State of Ohio to purchasers located in various other States of the United States and in the District of Columbia. The respondent at all times mentioned herein maintained a course of trade in said product 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 aforesaid business and for the purpose of inducing the purchase of its antifreeze product "60 Below," the respondent circulated among prospective purchasers throughout the United States, by United States mails, advertisements in trade journals, by means of advertising folders, pamphlets, circular letters, streamers, and other advertising material all of general circulation, many statements and representations concerning its said product. Among and typical of such statements and representations are the following:

THE PERFECT PERMANENT ANTI-FREEZE.

It is non-corrosive—completely anti-rust against all automotive metals.

It is non-gelatinous—non-gummons—will not crawl nor seep.

60 Below is not dangerously corrosive to automotive: iron, steel, bronze, solder, copper, brass, aluminum.

60 Below is less corrosive, on the whole, than tap water.

60 Below anti-corrosion performance compares favorably with any known premium quality anti-freeze marketed in the United States.

We hold that 60 Below is far removed from the classification of those anti-freeze products which in the past have proven ruinous and costly in use.

60 Below has been tested and approved by the laboratories of Northwestern University, Purdue University, Firestone Tire and Rubber Company, Pittsburgh Plate Glass Company—we could go on with hundreds more of such reputable commercial and universal laboratories who are interested in the development and progress of these, our United States, and its people.

Complete absence of corrosion of any kind * * * A safe unexcelled anti-freeze.

Calcium bichlorinate in plain English spells 60 Below permanent anti-freeze.

L. H. LETTS, *Pres.*

FREEDOM CHEMICAL COMPANY,
Cleveland, Ohio.

Reporting factual observations at U. S. Bureau of Standards, Washington, on their tests of our 60 Below. On November 11 the three Ford motors under load, two in second gear, had already run more than 11,000 miles at 25 miles per hour, protected to zero degrees, operating temperature 176 degrees, continuous since October fifteenth, with the two national brands of permanent anti-freeze you know best simultaneously tested for comparison. Observation of performance of 60 Below on this mileage, which represents over the average one year normal driving, substantiating all our product claims, previous tests, and satisfactory consumer experience. As evidenced by these comparative U. S. Bureau of Standards tests, results show 60 Below does not corrode through any cooling system, metals, pumps, gaskets or rubber.

(Signed) R. EARL BURROWS.

Through the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, the respondent represented directly or by implication that its product, "60 Below," was a perfect permanent antifreeze for use in automobile and truck radiators; that it would not become gelatinous, and would not gum up, crawl, or seep; that it would not cause any corrosive damage to automotive metals, such as iron, steel, bronze, solder, copper, brass, and aluminum; that it was less corrosive to automotive metals than ordinary tap water; that its anticorrosive qualities compared favorably with any known premium quality antifreeze marketed and sold in the United States; that it was in a superior class from antifreeze solutions which had proven ruinous and costly in use; that factual observations of tests being conducted by the United States Bureau of Standards at Washington, D. C., of respondent's product simultaneously conducted with products of competitors substantiated all of respondent's claims for its product, and that said tests did not show any corrosion caused by said product to any cooling system metals and gaskets or rubber; that its products, "60 Below," had been tested and approved by laboratories of Northwestern University, Purdue University, Firestone Tire & Rubber Co., Pittsburgh Plate Glass Co., and hundreds of other reputable commercial and university laboratories throughout the United States; and that its product contained a chemical called calcium bichlorinate.

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PAR. 4. The foregoing claims, statements, and representations were grossly exaggerated, false, and misleading. Respondent's product was not a perfect permanent antifreeze. Respondent's product was composed of a calcium chloride base and was inferior to antifreeze solutions containing glycerin or alcoholic bases. Said product caused seepage. It was highly corrosive to automotive metals, such as iron, steel, bronze, solder, copper, brass, and aluminum. It was more corrosive than ordinary tap water. Said product's noncorrosive qualities did not compare favorably with quality antifreeze solutions sold in the United States. It was not in a class to itself over antifreeze products which were injurious to cars. Factual observations of tests conducted by the United States Bureau of Standards on respondent's product simultaneously with tests on competing antifreeze solutions did not substantiate claims made by respondent for its product. Said tests showed corrosive effects on automotive metals used in the cooling system, on the distributor caps, ignition systems, and on water pumps on the engines used in said tests. There is no such chemical as calcium bichlorinate. Respondent's product was produced from calcium chloride. Respondent's product had not been approved after laboratory tests conducted by Northwestern University, Purdue University, Firestone Tire & Rubber Co., or Pittsburgh Plate Glass Co. Because of the highly corrosive properties of respondent's said product when in contact with metals, it was not a safe antifreeze for use in automotive engine cooling systems.

PAR. 5. The use by the respondent of the foregoing misleading statements and representations, disseminated as aforesaid, had the tendency and capacity to and did mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations were true, and induced the public to purchase substantial quantities of respondent's product as a result of such belief.

CONCLUSION

The foregoing acts and practices of respondent as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (no answer having been filed by respondent) and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent-

ent upon the record; 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, Freedom Chemical 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 its antifreeze solution designated "60 Below," or any other antifreeze solution of substantially similar composition or possessing substantially similar chemicals or ingredients, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent's product, "60 Below," is a perfect permanent antifreeze; that it is noncorrosive to automotive metals; that it is nongelatinous, nonguminous, and will not crawl or seep; that "60 Below" is not corrosive to iron, steel, bronze, solder, copper, brass, or aluminum; that "60 Below" is less corrosive than tap water, that "60 Below" anticorrosion performance compares favorably with any known premium quality antifreeze marketed in the United States; that "60 Below" is superior to antifreeze products which have proven ruinous and costly in use.

2. Representing, directly or by implication, that tests conducted by the United States Bureau of Standards show that respondent's product, "60 Below," is noncorrosive to cooling systems, metals, pumps, gaskets, or rubber.

3. Representing, directly or by implication, that respondent's antifreeze products, "60 Below," has been approved by the laboratories of Northwestern University, Purdue University, Firestone Tire & Rubber Co., or Pittsburgh Plate Glass Co., as a result of tests of respondent's product; or that said product has been approved by any commercial or university laboratory, when such is not the fact.

4. Representing, directly or by implication, that respondent's product, "60 Below," contains a chemical called "calcium bichlorinate."

5. Representing "60 Below" as an antifreeze preparation for use in the cooling systems of automotive engines, without disclosing that said product is highly corrosive when in contact with metals such as iron, steel, bronze, solder, copper, brass, and aluminum.

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.

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IN THE MATTER OF
THE PREMIER CONE BAKING CO.

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

Docket 4947. Complaint, Apr. 19, 1943—Decision, June 24, 1943

Where a corporation, engaged in the manufacture and competitive interstate sale and distribution of boxes of ice-cream cones, a small number of which in each box were molded to show a star, for use by retailers and other ice-cream sellers in distribution of ice cream to their customers, under a plan involving use of a lottery scheme or game of chance, by which consumers who secured by chance one of said star-bearing cones received without further charge an additional cone;

Sold, along with display sheets depicting child, adult, and ice cream cones and bearing legend "Look, Mom! Lucky Star Gets You Another FREE," such assortments to wholesalers, jobbers, and ice-cream manufacturers by whom they were resold to retailers and employed as aforesaid in the sale of cones of ice cream to purchasing public; and thereby

Supplied to and placed in hands of the latter, means of conducting lotteries in the sale of its products and ice cream, in accordance with said plan involving sale of a chance to procure a free additional ice-cream cone, contrary to an established public policy of the United States Government and in competition with many who do not use any method contrary to public policy;

With result that many dealers and ultimate purchasers were attracted by said sales plan and the element of chance involved therein, and were induced to buy and sell its merchandise in preference to that sold by aforesaid competitors; and with tendency and capacity unfairly to divert trade in commerce to it from them:

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 acts and practices therein.

Mr. J. W. Brookfield, Jr., for the Commission.

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 the Premier Cone Baking Co., 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, the Premier Cone Baking Co., is a corporation, organized and operating under and by virtue of the laws of