

Complaint

IN THE MATTER OF

WINTERINE MANUFACTURING COMPANY

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

Docket 4945. Complaint, Apr. 16, 1943—Decision, Nov. 22, 1943

Where a corporation engaged in the manufacture and interstate sale and distribution of a so-called antifreeze solution which it sold to garages and service stations; through advertisements in newspapers, radio continuities, advertising folders, and otherwise, directly and by implication—

- (a) Represented that its said product furnished protection to the cooling systems of automobiles and other combustion type engines against freezing and other damaging effects, was safe and dependable for use as recommended, and had proved itself to be a superior permanent type antifreeze; and
- (b) Represented that it protected the entire cooling system of automobile engines against corrosion, rust, and deterioration, would not cause rust or other damage to the hose connections, radiator finish, or engine, and would not evaporate or clog passages in the cooling system;

The facts being that its said product, composed of a calcium chloride base, was inferior to antifreeze solutions containing glycerine or alcohol bases and was not safe and dependable, but use thereof caused rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wire, spark plugs, hose connections, and exterior finish of automobiles;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that such false representations were true, and of inducing it to purchase substantial quantities of said product as a result of such mistaken belief:

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. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

McDonough & McDonough, of Denver, Colo., 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 Winterine Manufacturing Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

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PARAGRAPH 1. Respondent, Winterine Manufacturing Co., is a corporation, organized and existing under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 105-109 Wazee Market, Denver, Colo.

PAR. 2. The respondent is now, and for more than 1 year last past, has been engaged in the manufacture, sale, and distribution of a so-called antifreeze solution designated "Antartic" recommended for use in the cooling system of automobiles and other combustion type engines. Said product is sold by the respondent to jobbers, garages, and service stations for resale to the purchasing public. Respondent causes its said product when sold to be transported from its place of business in the State of Colorado to purchasers thereof 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 said business and for the purpose of inducing the purchase of its said product "Antartic" the respondent has circulated and is now circulating among prospective purchasers throughout the United States many false advertisements concerning its said product by means of the United States mails, by advertisements in newspapers, by radio continuities, by means of advertising folders, pamphlets, display posters, and other advertising material. Among and typical of such false statements and representations circulated as aforesaid, are the following:

When you put a Permanent-type Antifreeze solution in the cooling system of your car you do it for *protection* * * * a protection against freezing and its damaging effects for an *entire season* * * * you have a right to *expect that protection*.

The result of painstaking experiments and months of careful research and development, Antartic is a safe, dependable and trouble-free, all-winter protection for your car.

ANTARCTIC does more than protect your car against unexpected freezing. It also protects against corrosion, rust and deterioration of the entire cooling system. * * *

GUARANTEE. The manufacturer of Antartic antifreeze guarantees; If used according to directions, in a normal cooling system, *Antartic Antifreeze* will protect the cooling system from freezing for a full winter season. It will not cause rust or deteriorate the hose, radiator or engine of your car. It will not cause damage to the finish of your car. It will not evaporate. It will not clog passages in the cooling system.

PAR. 4. Through the use of 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 "Antartic" furnishes protection to the cooling systems of

automobile and other types of combustion engines against freezing and other damaging effects; that it is safe and dependable for use as recommended and has proved itself to be a superior permanent-type antifreeze; that it protects the entire cooling system of automobile engines against corrosion, rust and deterioration; that its use will not cause rust or other damage to the hose connections, radiator, finish of automobiles, or the engine; and that it will not evaporate or clog passages in the cooling system.

PAR. 5. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's product "Antarctic" is composed of a calcium chloride base and is inferior to antifreeze solutions containing glycerine or alcoholic bases. It is not a safe and dependable product for use as recommended and has not proven itself to be a superior type of antifreeze. It does not protect the cooling system of engines against corrosion, rust, or other deterioration. The use of said product causes and has caused rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wires, spark plugs, hose connections, and to the exterior finish of automobiles.

PAR. 6. 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 the result of such belief.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged, are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 16, 1943, issued and subsequently served its complaint in this proceeding upon respondent, Winterine Manufacturing Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of provisions of that act. An answer was filed by the respondent on May 3, 1943. 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, subject to the approval of the Commission, 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 the complaint, or in opposition thereto, and 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. 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, answer and stipulation as to the facts, said 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Winterine Manufacturing Co., is a corporation, organized and existing under and by virtue of the laws of the State of Colorado, with its office and principal place of business located at 105-109 Wazee Market, Denver, Colo.

PAR. 2. The respondent, for more than 1 year prior to December 19, 1942, had been engaged in the manufacture, sale, and distribution of a so-called antifreeze solution designated "Antarctic," recommended for use in the cooling system of automobiles and other combustion-type engines. Said product was sold by respondent to jobbers, garages, and service stations for resale to the purchasing public. Respondent caused said product, when sold, to be transported from its place of business in the State of Colorado to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintained, and at all times mentioned herein had maintained, a course of trade in said product among and between various States of the United States.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its said product "Antarctic," respondent, prior to December 19, 1942, circulated among prospective purchasers throughout the United States many advertisements concerning its said product by means of the United States mails, by advertisements in newspapers, by radio continuities, by means of advertising folders, pamphlets, display folders, and other advertising material. Among and typical of such statements and representations circulated as aforesaid are the following:

When you put a permanent type antifreeze solution in the cooling system of your car conditioned for *protection*—a protection against freezing and its damaging effects for an *entire season* * * * you have a right to *expect that protection*.

The result of painstaking experiments and months of careful research and development, Antarctic is a safe, dependable, and trouble-free, all-winter protection for your car. Antarctic does more than protect your car against unexpected freezing. It also protects against corrosion, rust, and deterioration of the entire cooling system.

Guarantee. The manufacturer of Antarctic Antifreeze guarantees: If used according to directions, in a normal cooling system, ANTARCTIC ANTIFREEZE will protect the cooling system from freezing for a full winter season. It will not cause rust or deteriorate the hose, radiator or engine of your car. It will not evaporate. It will not clog passages in the cooling system.

Said guarantee was conditioned upon adherence by the user to detailed directions for use supplied by respondent.

PAR. 4. Through the statements and representations herein set forth and other similar statements not specifically set out herein, the respondent has represented, directly or by implication, that its product "Antarctic" furnishes protection to the cooling systems of automobiles and other types of combustion engines against freezing and other damaging effects; that it is safe and dependable for use as recommended, and has proved itself to be a superior permanent type antifreeze; that it protects the entire cooling system of automobile engines against corrosion, rust, and deterioration; that its use will not cause rust or other damage to the hose connections, radiator, finish on automobiles, or to the engine; and that it will not evaporate or clog passages in the cooling system.

PAR. 5. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's product "Antarctic" is composed of a calcium chloride base and is inferior to antifreeze solutions containing glycerine or alcohol bases. It is not a safe and dependable product for use as recommended, and has not proved itself to be a superior type of antifreeze. It does not protect the cooling systems of engines against corrosion, rust, or other deterioration. The use of said product causes, and has caused, rust, corrosion, clogged passages, and other serious damages to the engines, radiators, ignition wires, spark plugs, hose connections, and to the exterior finish of automobiles.

PAR. 6. The use by the respondent of the foregoing 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

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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, the answer of the respondent, and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondent upon the record, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent findings as to the facts and conclusion based thereon and an order disposing of the proceeding, 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, Winterine Manufacturing Co., a corporation, its officers, 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 its antifreeze solution designated "Antarctic," or in any other antifreeze solution of substantially similar composition or having substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

1. That said product is a safe and dependable antifreeze preparation for use in the cooling systems of automobile or other internal combustion engines.
2. That said product is a superior type of antifreeze preparation.
3. That said product will protect the cooling systems of automobile or other internal combustion engines against rust, corrosion, or other deterioration.
4. That said product will not rust, corrode, or clog the cooling systems of automobile or other internal combustion engines, or will not damage radiators, hose connections, or the exterior finish of automobiles.

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It is further ordered, That 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
S. BUCHSBAUM & CO.

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

Docket 4450. Complaint, Jan. 25, 1941—Decision, Nov. 23, 1943

Where a corporation engaged in the manufacture and interstate sale and distribution of men's accessories, including suspenders, belts, garters, wrist-watch bands, key chains, raincoats, and other similar merchandise made from "vinylite," a resinous derivative of vinyl with an added plasticizer—
Represented through use of trade name, "Elasti-Glass," to designate and describe its said products, and through advertisements in newspapers and other periodicals, form letters, and other advertising material, that its said products were made of glass, as understood by the general public, processed in such a manner as to give it elastic properties;
The facts being plastic material in question had none of the characteristics of glass other than that of transparency; it had a molding temperature of about 120° to 130° C. as compared to that of common glass, which is about 800° to 900° C. higher; it differed from glass also in that it did not have a high-scratch hardness, low-water absorption or high-softening and decomposition point; and differed along with other similar synthetic resinous compounds, and so greatly in composition, methods of manufacture and properties from common glass as to constitute a separate division of chemical technology;
With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the products so designated were made from common glass processed to make it pliable and elastic, and to cause them to purchase its products because of such mistaken belief:
Held, That said 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. Charles A. Vilas*, trial examiner.

Mr. Eldon P. Schrup, *Mr. D. C. Daniel*, and *Mr. James W. Cassidy* for the Commission.

Moses, Kennedy, Stein & Bachrach, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that S. Buchsbaum & 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 public interest, hereby issues its complaint, stating its charges in that respect as follows: