

Syllabus

IN THE MATTER OF

WHELESS W. GAMBILL, JR., RUSSELL M. CAMPBELL, AND
M. YUHAS, TRADING AS CHEMICALS OF THE SOUTH,
ETC.

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

Docket 4999. Complaint, July 9, 1943—Decision, Dec. 3, 1943

Where three individuals engaged in the manufacture of "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," recommended for use in the cooling systems of automobiles and other combustion engines, and in the sale thereof to a concern in which one of them was a partner and which sold said products to jobbers, garages, and service stations for resale to the purchasing public; by means of statements in periodicals and trade journals, advertising folders, pamphlets, display posters, and other advertising material, directly and by implication—

- (a) Represented falsely that their said products were safe and dependable for use as recommended and had proved themselves to be superior permanent type antifreezes; which protected the entire cooling system of automobile engines against corrosion, rust, and deterioration; that their use would not cause rust or other damage to the hose connections, radiators, finish of automobiles, or engine; and that they would not evaporate or clog the cooling system;

The facts being the products in question had a calcium chloride base and were neither superior nor safe and dependable; use thereof would corrode and rust most metals, and had caused and would cause serious damage to the engines, radiators, ignition wires, spark plugs, hose connections, and to the exterior finish of automobiles, resulted in leakage in the cooling systems, and also in evaporation, giving rise to persistent ignition trouble by virtue of the salt content when any of the solution came in contact with the spark plugs or ignition wires; and

- (b) Failed to disclose to the purchasing public, a substantial portion of which understands and believes, that an "antifreeze" is safe and dependable and will not cause deterioration or injury to the parts of an automotive engine with which it would normally come in contact—any of the injurious and damaging effect which result from the use of the aforesaid product, except the electrolytic action thereof when brought in contact with spark plugs and ignition wires;

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

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.

Complaint

37 F. T. C.

Mr. Jesse D. Kash for the Commission.

Maddin, Bailey & Powell and *Mr. John W. Hildrop*, of Nashville, Tenn., for respondents.

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 Wheless W. Gambill, Jr., Russell M. Campbell, and M. Yuhas, individuals, trading as Chemicals of the South; Tennessee Valley Associated Marketers, Bond Anti-Freeze Factory, Lo-Temp Chemical Works, and Lo-Zone Chemical Works, hereinafter referred to as respondents, have 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. The respondents, Wheless W. Gambill, Jr., Russell M. Campbell, and M. Yuhas, are individuals, trading as Chemicals of the South, Tennessee Valley Associated Marketers, Bond Anti-Freeze Factory, Lo-Temp Chemical Works, and Lo-Zone Chemical Works, with their office and principal place of business located at 117-119 Ninth Avenue North, Nashville, Tenn.

PAR. 2. The respondents are now, and since August 1942, have been, engaged in the manufacture, sale, and distribution of so-called anti-freeze solutions designated "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," recommended for use in the cooling systems of automobiles and other combustion type engines. Said product is sold by the respondents to jobbers, garages, and service stations for resale to the purchasing public. Respondents cause their said products when sold to be transported from their place of business in the State of Tennessee to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondents maintain, and at all times mentioned herein have 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. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products, "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze" and "Bond Top Line Anti-Freeze," the respondents have circulated and are now circulating among prospective purchasers throughout the United States many false advertisements concerning their said products by means of the

Complaint

United States mails, by advertisements in periodicals and trade journals, and 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:

Permanent anti-freeze to 90 below freezing.

One filling lasts all winter—does not evaporate or boil away.

Contains rust and corrosion inhibitors to protect metal parts and does not attack rubber hose or gasket material.

Thoroughly tested and highly approved in laboratory tests, made of non-critical materials and available in large quantities.

Full protection to 90 degrees below freezing. Even a reasonable quantity will give protection against cracked blocks and broken radiators.

This anti-rust permanent type anti-freeze is an aqueous solution of calcium, sodium, potassium and magnesium chlorides, treated and processed with phosphates and other stabilizers and corrosion inhibitors. Contains no ethylene glycol, alcohol formation or glycerine.

GUARANTEE

Bond Top Line Anti-Freeze Division specifically guarantees that BOND-TOP LINE brand anti-freeze, if used according to printed instructions in normal water cooling systems, will protect the cooling system of your car against freezing and clogging from rust formation for a full winter; also that it will not boil away, will not cause damage to car finish, or to the metal or rubber parts of the cooling system, and that it will not leak out of the cooling system, which, after removal of rust formation, and proper servicing, is actually leak-tight.

BOND-TOP LINE ANTI-FREEZE has everything you want; single-shot action—one filling lasts all season. Non-corrosive—will not eat away metal, rubber hose or gasket material; ample supply—made of non-critical materials; top line performance—thoroughly tested and approved.

Non-corrosive. Unlike some anti-freeze compounds, Lo-Zone has that efficient freeze prevention, and yet has no harsh chemicals that corrode the metal of your cooling system. Lo-Zone is made of quality ingredients which are not critically needed by our government. This master anti-freeze is guaranteed not to clog your radiator. This means no draining and refills needed. It mixes smoothly and evenly with the water in your radiator, with ideal distribution of its anti-freeze properties. Invest in Lo-Zone just once, and say good-bye to your radiator worries all winter.

Flash! Lo Temp permanent anti-freeze holds to 90 degrees below freezing. From all over the country orders are pouring in for this amazing new anti-freeze. Dealers say it's the "hot test" anti-freeze on the market. And no wonder—just look at these exclusive selling points—non-corrosive, one shot lasts the year, non-clogging, will not attack rubber hose, metal or gasket material, non-vaporizing— * * * There is still a supply on hand—get your order in now. Lo-Temp Chemical Works, 117 Ninth Avenue North.

New—Different—Better! Bond Anti-Freeze—guaranteed permanent—safe, non-corrosive, bonded performance—thoroughly tested and highly approved in laboratory tests—Bond Anti-Freeze Factory, 117 Ninth Avenue North.

Complaint

37 F. T. C.

Safe protection for the cooling system of your priceless car. Seven years of painstaking research—tested in leading laboratories—no corrosion. Nearly a million gallons sold this fall.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents have represented, directly or by implication, that their products, "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," furnish protection to the cooling systems of automobiles and other types of combustion engines against freezing to 90° below freezing and prevents other damaging effects; that they are safe and dependable for use as recommended and have proved themselves to be superior permanent type antifreezes; that they protect the entire cooling system of automobile engines against corrosion, rust, and deterioration; that their use will not cause rust or other damage to the hose connections, radiators, finish of automobiles, or the engine, and that they 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 respondents' products Lo-Temp Anti-Freeze, Lo-Zone Anti-Freeze, and Bond Top Line Anti-Freeze are composed of a calcium chloride base and are inferior to antifreeze solutions containing glycerin or alcoholic bases. Said products will not protect the cooling systems of automobiles to 90° below freezing. They are not safe and dependable products for use as recommended and superior types of antifreeze. They do not protect the cooling system of engines against corrosion, rust, or other deterioration. The use of said products 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. Said products evaporate and will clog passages in the cooling system.

For many years there have been on the market and sold to the general public throughout the United States solutions for use in the water in the cooling systems of automobile and other types of internal combustion engines to prevent injury to such engines from the freezing of the water used in the cooling system. These solutions are known as "antifreeze" and have proven dependable both from the standpoint of protecting the cooling system and other parts of the engine from cold and in not damaging any part of the engine or vehicle in which the engine is installed through rust, corrosion, clogging, or any other form of deterioration or injury.

When a product is advertised as an "antifreeze," the public believes that it possesses the attributes found in these long used, dependable

products; that it may be used with safety in such cooling systems; that it will not cause rust, corrosion, clogging, or other deterioration or injury, and that it will protect the cooling system and other parts of the engine from cold.

Respondents' representation that their said products are "antifreeze" leads the public to believe that said products are safe and dependable for use in the cooling systems of internal combustion engines in guarding against damage from low temperatures and without injury to such engines or the vehicle in which installed from rust, corrosion, clogging, or other deleterious or damaging effects. Respondents' failure to inform the general public of the deleterious and damaging effects which result or may result from the use of their products as an "antifreeze" is misleading and deceptive.

PAR. 6. The use by the respondents 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 respondents' products as a result of such belief.

PAR. 7. The aforesaid acts and practices of the respondents, 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 July 9, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of an answer by respondents, a stipulation as to the facts was entered into between W. T. Kelley, chief counsel for the Commission, and John W. Hilldrop and Ferniss C. Bailey, counsel for respondents. 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 or in opposition to the allegations of said complaint. Respondents expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint 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. Respondent, W. Wheless Gambill, Jr., the individual referred to in the complaint as Wheless W. Gambill, Jr., respondent, F. Russell Campbell, the individual referred to in the complaint as Russell M. Campbell, and respondent, Marie Yuhas, the individual referred to in the complaint as M. Yuhas, are copartners, trading as Chemicals of the South, Bond Anti-Freeze Factory, Lo-Temp Chemical Works, and Lo-Zone Chemical Works, with their office and principal place of business located at 117-119 Ninth Avenue North, Nashville, Tenn. Respondent, W. Wheless Gambill, Jr., and other individuals not named herein are copartners, trading as Tennessee Valley Associated Marketers, with their place of business located at the above address.

PAR. 2. The respondents, as copartners, for some time prior to January 20, 1943, were engaged in the manufacture, sale, and distribution of products designated "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," recommended for use in the cooling systems of automobiles and other combustion types of engines. Said products were sold by the respondents, as copartners, to Tennessee Valley Associated Marketers, who in turn sold such products to jobbers, garages, and service stations for resale to members of the purchasing public. Respondents caused their said products, when sold, to be transported from their place of business in the State of Tennessee to purchasers thereof located in various other States of the United States and in the District of Columbia. At all times mentioned herein the respondents 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. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said products "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," the respondents circulated among prospective purchasers throughout the United States advertisements concerning their said products in periodicals and trade journals and by means of advertising folders, pamphlets, display posters, and other advertising material. Among and typical of the statements and representations contained in said advertising literature circulated as aforesaid are the following:

635

Findings

Contains rust and corrosion inhibitors to protect metal parts and does not attack rubber hose or gasket material.

* * * * *

Thoroughly tested and highly approved in laboratory tests, made of non-critical materials and available in large quantities.

* * * * *

Full protection to 90 degrees below freezing. Even a reasonable quantity will give protection against cracked blocks and broken radiators.

* * * * *

This anti-rust permanent type anti-freeze is an aqueous solution of calcium, sodium, potassium and magnesium chlorides, treated and processed with phosphates and other stabilizers as corrosion inhibitors. Contains no ethylene glycol, alcohol formation or glycerine.

* * * * *

GUARANTEE

Bond Top Line Anti-Freeze Division specifically guarantees that BOND-TOP LINE brand anti-freeze, if used according to printed instructions in normal water cooling systems, will protect the cooling system of your car against freezing and clogging from rust formation for a full winter; also that it will not boil away, will not cause damage to car finish, or to the metal or rubber parts of the cooling system, and that it will not leak out of the cooling system, which, after removal of rust formation, and proper servicing, is actually leak-tight.

* * * * *

BOND-TOP LINE ANTI-FREEZE has everything you want; single-shot action—one filling lasts all season. Non-corrosive—will not eat away metal, rubber hose or gasket material; ample supply—made of non-critical materials; top line performance—thoroughly tested and approved.

* * * * *

Non-corrosive. Unlike some anti-freeze compounds, Lo-Zone has that efficient freeze prevention, and yet has no harsh chemicals that corrode the metal of your cooling system. Lo-Zone is made of quality ingredients which are not critically needed by our government. This master-anti-freeze is guaranteed not to clog your radiator. This means no draining and refills needed. It mixes smoothly and evenly with the water in your radiator, with ideal distribution of its anti-freeze properties. Invest in Lo-Zone just once, and say good-bye to your radiator worries all winter.

* * * * *

Flash! Lo Temp permanent anti-freeze holds to 90 degrees below freezing. From all over the country orders are pouring in for this amazing new anti-freeze. Dealers say it's the "hot test" anti-freeze on the market. And no wonder—just look at these exclusive selling points—non-corrosive, one shot lasts the year, non-clogging, will not attack rubber hose, metal or gasket material, non-vaporizing—

* * * * *

There is still a supply on hand—get your order in now. Lo-Temp Chemical Works, 117 Ninth Avenue North.

* * * * *

New—Different—Better! Bond Anti-Freeze—guaranteed permanent—safe, non-corrosive, bonded performance—thoroughly tested and highly approved in laboratory tests—Bond Anti-Freeze Factory, 117 Ninth Avenue North.

* * * * *

Findings

37 F. T. C.

Safe protection for the cooling system of your priceless car. Seven years of painstaking research—tested in leading laboratories—no corrosion. Nearly a million gallons sold this fall.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents have represented, directly or by implication, that their products "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze" are safe and dependable for use as recommended and have proved themselves to be superior permanent type antifreezes; that they protect the entire cooling system of automobile engines against corrosion, rust, and deterioration; that their use will not cause rust or other damage to the hose connections, radiators, finish of automobiles, or the engine; and that they 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 respondents' products "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze" are composed of a calcium chloride base, and are not superior types of antifreeze solutions and are not safe and dependable products for use as recommended. They do not protect the cooling system of engines against corrosion, rust, or other deterioration. In fact, the use of said products will bring about corrosion on most metals, including iron, steel, bronze, solder, copper, brass, and aluminum, and 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, and results in leakage in the cooling systems of automotive engines. Said products also evaporate in use. The use of any radiator solution which contains calcium chloride will give rise to persistent ignition trouble if any of the solution comes in contact with spark plugs or ignition wires, because the salt deposited when the water evaporates is very difficult to remove completely and when it cools it absorbs water and becomes a good electrical conductor, causing short circuits.

PAR. 6. Substantial and representative numbers of the purchasing public understand and believe that a product advertised and sold as an "antifreeze" for use in the cooling system of automotive engines is safe and dependable for such use and that it will not cause rust, corrosion, clogging of the cooling system, or other deterioration or injury to the parts of an automotive engine with which it would normally come in contact. Respondents have not disclosed to the purchasing public any of the injurious and damaging effects which result from the use of their aforesaid products except the electrolytic

635

Order

action thereof when brought in contact with spark plugs and ignition wires.

PAR. 7. The use by the respondents of the foregoing false and misleading statements and representations, disseminated as aforesaid, and the failure to disclose the material damage resulting from the use of their said products as recommended, 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 that said products are safe and dependable for use as recommended, and to induce, and does induce, the public to purchase substantial quantities of respondents' products as a result of such belief.

CONCLUSION

The foregoing acts and practices of respondents, 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, answer of the respondents, and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondents which provides, among other things, that without further evidence or other intervening procedure the Commission may enter and serve upon respondents 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 respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, W. Wheless Gambill, Jr., F. Russell Campbell, and Marie Yuhas, jointly or severally, trading as Chemicals of the South, Bond Anti-Freeze Factory, Lo-Temp Chemical Works, and Lo-Zone Chemical Works, or under any other name, and W. Wheless Gambill, Jr., trading as Tennessee Valley Associated Marketers, or under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of their products designated as "Lo-Temp Anti-Freeze," "Lo-Zone Anti-Freeze," and "Bond Top Line Anti-Freeze," or any other product of substantially similar composition, whether sold under the same

Order

37 F. T. C.

names or any other name or names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That said products, or any of them, are safe and dependable antifreeze preparations for use in the cooling systems of automobile engines.

2. That said products, or any of them, are superior types of antifreeze preparations.

3. That said products, or any of them, will protect the cooling systems of automobile engines against corrosion, rust, or other deterioration.

4. That said products, or any of them, will not cause rust, corrosion, or other damage to the cooling systems of automobile engines, or damage to such engines, or to radiators, or hose connections, or the exterior finish of automobiles.

5. That said products, or any of them, will not evaporate in use or clog passages in the cooling systems of automobile engines.

6. That said products, or any of them, are antifreeze preparations for use in the cooling systems of automobile engines without affirmatively disclosing in a clear and conspicuous manner in immediate connection with such representation that said preparations will rust and corrode the cooling system of an automobile engine and may clog the passages in such system.

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

Complaint

IN THE MATTER OF

GABRIEL H. GLADSTONE AND NEWTON A. GLADSTONE,
DOING BUSINESS AS GLADSTONE BROTHERS AND AS
AARON LEONARD COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT
OF CONGRESS APPROVED OCT. 14, 1940

Docket 4969. Complaint, May 27, 1943—Decision, Dec. 8, 1943

Where two individuals, engaged in designing and cutting fabrics for men's and boys' clothing to be made up for them by others, and in the interstate sale and distribution of said clothing—

- (a) Represented that certain clothing was made entirely of vicuna wool fabric, through distributing it labeled "Valcuna," and bearing a likeness to a vicuna; notwithstanding the fact that said clothing was made of fabric which contained a substantial amount of other fiber; and also
- (b) Sold and distributed men's and boys' suits labeled "London Park Clothes—\$40.00—All Wool," when in fact such suits contained substantial amount of fiber other than wool;

With effect of deceiving a substantial portion of the purchasing public into the mistaken belief that such representations were true, and of thereby inducing it to purchase the said clothing; and

Where said individuals engaged in sale and distribution, as aforesaid, of suits and other wearing apparel, including many which were wool products within the intent and meaning of the Wool Products Labeling Act of 1939—

- (c) Sold and distributed such clothing misbranded in violation of aforesaid act and the rules and regulations promulgated thereunder, in that it did not have on or affixed thereto a stamp, tag, label, or other means of identification showing the percentage of the total fiber weight of wool, reprocessed wool; reused wool, nonwool fiber and aggregate thereof, including filler or adulterating matter, and proper identification of the manufacturer or seller:

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 within the intent and meaning of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939.

Mr. DeWitt T. Puckett for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Gabriel H. Gladstone and Newton A.