

IN THE MATTER OF
**BERNARD ENGINEERING COMPANY, LIONEL BERNARD
AND WILLIAM I. MILLER**

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT 20, 1914

Docket 4979. Complaint, June 16, 1943—Decision, Dec. 11, 1943

Where a corporation, owner of a patented formula for a so-called antifreeze solution for use in automobiles, along with its president and a second individual—president of a corporation subsequently dissolved which had been given the exclusive right for 5 years to manufacture and sell throughout the United States and Canada the antifreeze solution made in accordance with the formula owned by the first named concern, and who, after the dissolution of said corporation, continued to carry on the business through statements in advertising folders and circulars and on labels, directly or by implication—

- (a) Represented falsely that their said "Wonder Solv Anti-Freeze" furnished protection to the cooling systems of automobiles and other combustion-type engines against freezing and other damaging effects from low temperature, that it was safe and dependable for use and had proved itself to be a superior permanent type antifreeze; would prevent rust or other damage to hose connections, radiators, or other rubber and metal parts of the cooling system, and to the finish of automobiles; would not evaporate or clog passages in the cooling system; afforded full and complete protection against corrosion, rust, and electrolytic action in all types of water cooled internal combustion engines, and was not harmless to aluminum, brass, copper, zinc, iron, or any combination of metals, paint, and rubber;

The facts being the product in question, having a magnesium chloride base, was inferior to antifreeze solutions with glycerine or alcoholic bases; was not safe and dependable and was not permanent in that, in time, it evaporated; and use thereof would cause rust, corrosion, clogged passages, and other serious damage to the engine and radiator, would injure ignition wires, hose connections, spark plugs, or any other part of the automobile with which it came in contact; and was not harmless as claimed;

With result of placing in the hands of said second concern and individual, means whereby they were enabled to mislead and deceive the purchasing public, and of misleading and deceiving a substantial portion thereof into the mistaken belief that such statements were true, and of thereby inducing it to purchase substantial quantities of their said product:

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.

Mr. Frank M. Lario, of Camden, N. J., for respondents.

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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 Bernard Engineering Co., a corporation, Lionel Bernard, individually, and as an officer of Bernard Engineering Co., and William I. Miller, an individual, trading under the name of Miller Manufacturing Co., and as an officer of Miller Manufacturing Co., a corporation, 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. Respondent, Bernard Engineering Co., is a corporation, organized and existing under and by virtue of the laws of New Jersey, with its office and principal place of business located at 709 Market Street, Camden, N. J.

PAR. 2. Respondent, Bernard Engineering Co., is the owner of a patented formula for a so-called antifreeze solution for use in the cooling systems of automobiles. On October 6, 1942, it entered into an agreement with Miller Manufacturing Co., a corporation, under the terms of which Miller Manufacturing Co. was given the exclusive right for a period of 5 years to manufacture and sell throughout the United States and Canada antifreeze solution in accordance with the formula owned by respondent, Bernard Engineering Co. Under the terms of said agreement said Bernard Engineering Co. was to be paid a royalty of 50 percent of the net profit received from the sale of said antifreeze solution. Under said agreement the Miller Manufacturing Co. was required to keep on hand at least 3,000 packages of said solution at all times and was required to advertise the product. The Bernard Engineering Co. assumed the liability for any and all damages, losses or claims, which might be made because of the failure of its product to do and perform its functions as warranted and as represented by the Miller Manufacturing Co. It was further provided in said contract that the said agreement would apply to and bind the Bernard Engineering Co., its representatives and successors, and the Miller Manufacturing Co. and its successors and assigns. The said agreement further provided that upon the sale of every 5,000 packages of antifreeze solution by the said Miller Manufacturing Co. the Bernard Engineering Co. was to grant the said Miller Manufacturing Co. a bonus of one share of the capital stock of the respondent, Bernard Engineering Co. The Bernard Engineering Co. reserved the right to acquire exclusive right and ownership to the trade name given the product by said Miller Manufacturing Co. The

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Bernard Engineering Co. reserved the right to sell its patent at any time on the payment to the Miller Manufacturing Co. of an amount equal to one-fifth of such sale price. It further provided that the Miller Manufacturing Co. should have the right of option to purchase the patent and patent rights of the Bernard Engineering Co. for the price of \$50,000.

Respondent, William I. Miller, is an individual, trading under the name Miller Manufacturing Co., with his office and principal place of business located at 1100 Thirty-second Street, Camden, N. J., and was president of Miller Manufacturing Co., a corporation, which had its office and principal place of business located at 1100 Thirty-second Street, Camden, N. J.

Respondent, Lionel Bernard, is an individual, and is president of the corporate respondent, Bernard Engineering Co., with his office and principal place of business located at 709 Market Street, Camden, N. J.

PAR. 3. The Miller Manufacturing Co., a corporation, and respondent, William I. Miller, individually, and as an officer of said corporation and who also trades individually under the name Miller Manufacturing Co., for several months subsequent to October 6, 1942, the date of said agreement, were in accordance with the terms of said agreement, engaged in manufacturing, advertising, selling, and distributing a so-called antifreeze solution designated "Wonder Solv Anti-Freeze" recommended for use in the cooling system of automobiles and other combustion type engines and manufactured in accordance with the formula of said respondent, Bernard Engineering Co. Said product was sold by said Miller Manufacturing Co. and respondent, William I. Miller, trading under the name of Miller Manufacturing Co., to jobbers, garages, and service stations for resale to the purchasing public. Miller Manufacturing Co. and the respondent, William I. Miller, caused said product, when sold, to be transported from their place of business in the State of New Jersey to purchasers located in various other States of the United States and in the District of Columbia. The said Miller Manufacturing Co. and the respondent, William I. Miller, maintained, and at all times mentioned herein have 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. The Miller Manufacturing Co. was dissolved on or about January 23, 1943, and is no longer in existence.

PAR. 4. The respondent, Bernard Engineering Co. and Lionel Bernard, individually, and as an officer of Bernard Engineering Co., have since October 6, 1942, promoted, encouraged, directed, and assisted Miller Manufacturing Co., a corporation, and the respondent, Wil-

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liam I. Miller, as an officer of Miller Manufacturing Co., and individually, trading as Miller Manufacturing Co., in the manufacture, sale, advertising, and distribution of said so-called antifreeze solution designated "Wonder Solv Anti-Freeze," and have shared and participated in the profits arising from the sale of said product.

The individual respondent, William I. Miller, formulated, directed, and controlled the acts and practices of Miller Manufacturing Co., a corporation, prior to its dissolution about January 23, 1943, and directs, controls, and formulates the acts and practices of Miller Manufacturing Co., a trade name used by him.

The individual respondent, Lionel Bernard, formulates, directs and controls the acts and practices of the respondent, Bernard Engineering Co.

The respondents, Bernard Engineering Co., a corporation, Lionel Bernard, individually, and as an officer of Bernard Engineering Co., a corporation, and William I. Miller, individually, and as an officer of Miller Manufacturing Co. and trading as Miller Manufacturing Co., have acted in conjunction and cooperation each with the other in carrying out the acts and practices hereinafter set forth.

PAR. 5. In the course and conduct of their said business and for the purpose of inducing the purchase of their said product "Wonder Solv Anti-Freeze," the respondents have circulated among prospective purchasers throughout the United States many false statements concerning their said product by means of United States mails, advertising folders, circulars, and labels. Among and typical of such false statements and representations circulated as aforesaid are the following:

Wonder Solv Permanent Anti-Freeze and Anti-Rust.

Wonder Solv Anti-Freeze is a safe and efficient all-winter assurance against freezing.

GUARANTEE

WONDER SOLV ANTI-FREEZE is guaranteed *harmless* to aluminum, brass, copper, zinc, iron or any combination of metals, also paint and rubber. If used as directed, it will protect normal water cooling system against freezing and clogging from rust or corrosion for a full winter season. It will not boil off or expand in system any more than will water, nor will it leak from any system tight enough to hold water.

WONDER SOLV ANTI-FREEZE has been tested under all modern facilities for corrosion, rust or electrolytical action. The inhibitors used in this modern solution offers full protection against rust, corrosion or electrolytical action in all types of water cooled internal combustion engines. WONDER SOLV ANTI-FREEZE not only protects iron and steel but as in the modern car; copper, brass, solder, aluminum and rubber. These inhibitors have value in removing the already formed rust or corrosion deposits now lodged within the cooling system.

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PAR. 6. 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 product Wonder Solv Anti-Freeze furnishes protection to the cooling systems of automobile and other combustion type engines against freezing and other damaging effects; that it is safe and dependable for use and has proved itself to be a superior permanent type antifreeze; that its use will prevent rust or other damage to the hose connections, radiator and other metal and rubber parts of the cooling system and finish of automobiles; that it will not evaporate or clog passages in the cooling system; that said product affords full and complete protection against corrosion, rust, and electrolytical action in all types of water cooled internal combustion engines, and that said product is harmless to aluminum, brass, copper, zinc, iron or any combination of metals, paint, and rubber.

PAR. 7. The foregoing claims, statements, and representations are grossly exaggerated, false and misleading. In truth and in fact respondent's product is composed of a magnesium chloride base and is inferior to antifreeze solutions containing glycerine or alcoholic bases. It is not a safe and dependable product for use in the cooling systems of automobiles and has not proven itself to be a superior type of antifreeze. Said product is not permanent in that in the course of time it evaporates. It does not afford full and complete protection or any protection to the cooling systems of engines against corrosion, rust, or other deterioration. Said product is not harmless to aluminum, brass, copper, zinc, iron, or other metals or to paint and rubber. The use of said product as an antifreeze will cause rust, corrosion, clogged passages, and other serious damage to the engines and radiators, and said product will injure ignition wires, hose connections, spark plugs or any other part of the automobile with which it comes in contact.

PAR. 8. Respondents' representations that said product is safe and dependable for use as an antifreeze in the cooling system of automobile and other combustion type engines lead purchasers to believe that said product may be used without injury to the cooling systems of such engines and without danger to metals, paint or rubber with which said product may come in contact when used as an antifreeze solution. In truth and in fact said preparation is harmful to such cooling systems and metals, paint or rubber with which said product may come in contact. Respondents' failure to reveal the fact that it is harmful is misleading and deceptive.

PAR. 9. The acts and practices of the respondent, Bernard Engineering Co., a corporation, and the respondent, Lionel Bernard,

placed in the hands of Miller Manufacturing Co., a corporation, and William I. Miller, a means or instrumentality whereby such respondents were enabled to mislead and deceive the purchasing public.

PAR. 10. The use by the respondent of the foregoing false and misleading statements and representations disseminated as aforesaid, had, and now 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 statements and representations are true, and to induce the public to purchase substantial quantities of respondents' product as a result of such belief.

PAR. 11. 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 June 16, 1943, issued and subsequently served its complaint in this proceeding upon the respondents Bernard Engineering Co., a corporation, Lionel Bernard, individually, and as an officer of Bernard Engineering Co., a corporation, and William I. Miller, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. An answer was filed by the respondents on July 19, 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 attorneys for respondents 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 the complaint or in opposition thereto. Respondents expressly waived the filing of the 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. Respondent, Bernard Engineering Co., is a corporation, organized and existing under and by virtue of the laws of

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New Jersey, with its office and principal place of business located at 709 Market Street, Camden, N. J.

PAR. 2. Bernard Engineering Co. is the owner of a patented formula for a so-called antifreeze solution for use in the cooling systems of automobiles. On October 6, 1942, it entered into an agreement with Miller Manufacturing Co., a corporation, under the terms of which Miller Manufacturing Co. was given the exclusive right for a period of 5 years to manufacture and sell throughout the United States and Canada antifreeze solution in accordance with the formula owned by respondent, Bernard Engineering Co. Under the terms of said agreement said Bernard Engineering Co. was to be paid a royalty of 50 percent of the net profit received from the sale of said antifreeze solution. Under said agreement the Miller Manufacturing Co. was required to keep on hand at least 3,000 packages of said solution at all times and was required to advertise the product. The Bernard Engineering Co. assumed the liability for any and all damages, losses, or claims which might be made because of the failure of its product to do and perform its functions as warranted and as represented by the Miller Manufacturing Co. It was further provided in said contract that the said agreement would apply to and bind the Bernard Engineering Co., its representatives and successors, and the Miller Manufacturing Co. and its successors and assigns. The said agreement further provided that upon the sale of every 5,000 packages of antifreeze solution by the said Miller Manufacturing Co. the Bernard Engineering Co. was to grant the said Miller Manufacturing Co. a bonus of one share of the capital stock of the respondent, Bernard Engineering Co. The Bernard Engineering Co. reserved the right to acquire exclusive right and ownership to the trade name given the product by said Miller Manufacturing Co. The Bernard Engineering Co. reserved the right to sell its patent at any time on the payment to the Miller Manufacturing Co. of an amount equal to one-fifth of such sale price. It further provided that the Miller Manufacturing Co. should have the right of option to purchase the patent and patent rights of the Bernard Engineering Company for the price of \$50,000.

Respondent, William I. Miller, is an individual, trading under the name Miller Manufacturing Co., with his office and principal place of business located at 1100 North Thirty-second Street, Camden, N. J., and was president of Miller Manufacturing Co., a corporation, which had its office and principal place of business located at 1100 North Thirty-second Street, Camden, N. J.

Respondent, Lionel Bernard, is an individual, and is president of the corporate respondent, Bernard Engineering Co., with his office

and principal place of business located at 709 Market Street, Camden, N. J.

PAR. 3. In accordance with the terms of the agreement hereinabove described and for several months subsequent to the date thereof, the respondents, Miller Manufacturing Co., a corporation, and William I. Miller, individually, as officer of said corporation and trading as Miller Manufacturing Co., were engaged in manufacturing, advertising, selling, and distributing a so-called antifreeze solution designated "Wonder Solv Anti-Freeze," which was recommended by the respondents for use in the cooling systems of automobiles and other combustion-type engines and which was manufactured in accordance with the formula of said respondent, Bernard Engineering Co. Said product was sold by said Miller Manufacturing Co. and respondent, William I. Miller, trading under the name of Miller Manufacturing Co., to jobbers, for resale to the purchasing public. Miller Manufacturing Co. and the respondent, William I. Miller, caused said product, when sold, to be transported from their place of business in the State of New Jersey to purchasers located in various other States of the United States and in the District of Columbia. The said Miller Manufacturing Co. and the respondent, William I. Miller, maintained, and at all times mentioned herein have 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. The Miller Manufacturing Co. was dissolved on or about February 28, 1943, and is no longer in existence. William I. Miller, trading as Miller Manufacturing Co., is now operating said business, which business was commenced on or about March 1, 1943.

PAR. 4. The respondents, Bernard Engineering Co., and Lionel Bernard, individually, and as an officer of Bernard Engineering Co., have since October 6, 1942, promoted and encouraged the sale of said solution, and have directed and assisted Miller Manufacturing Co., a corporation, and the respondent, William I. Miller, as an officer of Miller Manufacturing Co., and individually, trading as Miller Manufacturing Co., in the manufacture, sale, advertising, and distribution of said so-called antifreeze solution designated "Wonder Solv Anti-Freeze."

Under the terms of said agreement, the respondent, Bernard Engineering Co., was to share the profits arising from the sale of said product.

The respondent, William I. Miller, formulated, directed and controlled the acts and practices of Miller Manufacturing Co., a corporation, prior to its dissolution about February 28, 1943.

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The individual respondent, Lionel Bernard, formulates, directs, and controls the acts and practices of the respondent, Bernard Engineering Co.

The respondents, Bernard Engineering Co., a corporation, Lionel Bernard, William I. Miller, individually, and as an officer of Miller Manufacturing Co. and trading as Miller Manufacturing Co., have acted in conjunction and cooperation each with the other in carrying out the acts and practices hereinafter set forth.

PAR. 5. In the course and conduct of their said business and for the purpose of inducing the purchase of their said product "Wonder Solv Anti-Freeze," the respondents have circulated among prospective purchasers throughout the United States many statements concerning their said product by means of United States mails, advertising folders, circulars, and labels. Among and typical of such statements and representations circulated as aforesaid are the following:

Wonder Solv Permanent Anti-Freeze and Anti-Rust.

Wonder Solv Anti-Freeze is a safe and efficient all-winter assurance against freezing.

GUARANTEE

WONDER SOLV ANTI-FREEZE is guaranteed harmless to aluminum, brass, copper, zinc, iron or any combination of metals, also paint and rubber. If used as directed, it will protect normal water cooling system against freezing and clogging from rust or corrosion for a full winter season. It will not boil off or expand in system any more than will water, nor will it leak from any system tight enough to hold water.

WONDER SOLV ANTI-FREEZE has been tested under all modern facilities for corrosion, rust or electrolytical action. The inhibitors used in this modern solution offers full protection against rust, corrosion or electrolytical action in all types of water cooled internal combustion engines. WONDER SOLV ANTI-FREEZE not only protects iron and steel but as in the modern car; copper, brass, solder, aluminum and rubber. These inhibitors have value in removing the already formed rust or corrosion deposits now lodged within the cooling system.

PAR. 6. 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 product Wonder Solv Anti-Freeze furnishes protection to the cooling systems of automobile and other combustion type engines against freezing and other damaging effects from low temperature, that it is safe and dependable for use and has proved itself to be a superior permanent type antifreeze; that its use will prevent rust or other damage to hose connections, radiators or other rubber and metal parts of the cooling system, and to the finish of automobiles; that it will not evaporate or clog passages in the cooling system; that said product affords full and complete protection against corrosion, rust, and electrolytical action in all types of water cooled internal-

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combustion engines, and that said product is harmless to aluminum, brass, copper, zinc, iron, or any combination of metals, paint and rubber.

PAR. 7. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's product is composed of a magnesium chloride base and is inferior to antifreeze solutions containing glycerine or alcoholic bases. It is not a safe and dependable product for use in the cooling systems of automobiles and has not proven itself to be a superior type of antifreeze. Said product is not permanent in that in the course of time it evaporates. It does not afford full and complete protection or any protection to the cooling systems of engines against corrosion, rust, or other deterioration. Said product is not harmless to aluminum, brass, copper, zinc, iron, or other metals or to paint and rubber. The use of said product as an antifreeze will cause rust, corrosion, clogged passages and other serious damage to the engine and radiator, and said product will injure ignition wires, hose connections, spark plugs, or any other part of the automobile with which it comes in contact.

PAR. 8. The acts and practices of the respondent, Bernard Engineering Co., a corporation, and the respondent, Lionel Bernard, placed in the hands of Miller Manufacturing Co., a corporation, and William I. Miller, a means or instrumentality whereby such respondents were enabled to mislead and deceive the purchasing public.

PAR. 9. The use by the respondents of the foregoing false and 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 statements and representations were true, and induced 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 and a stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondents upon the record; 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, Bernard Engineering Co., a corporation; Lionel Bernard, individually, and as an officer of Bernard Engineering Co.; William I. Miller, an individual, trading under the name of Miller Manufacturing Co. and as an officer of Miller Manufacturing Co., a corporation, and their respective agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale, or distribution of their antifreeze preparation designated "Wonder-Solv," 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, 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 product is a safe or dependable antifreeze preparation for use in the cooling systems of automobile engines.

2. That said product is a superior type of antifreeze preparation.

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

4. That said product 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 product will not evaporate in use or clog passages in the cooling systems of automobile engines.

6. That said product will not injure, rust, or corrode aluminum, brass, copper, zinc, iron, or other metals, or injure the rubber parts of the cooling systems of automobile engines.

7. That said product is an antifreeze preparation 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 preparation will rust and corrode the cooling systems of automobile engines and may clog the passages in such systems.

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 are complying with this order.