

IN THE MATTER OF

C. F. LUSK TRADING AS C. F. LUSK COMPANY

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

Docket 4911. Complaint, Feb. 15, 1943—Decision, Mar. 27, 1944

Where an individual engaged in interstate sale and distribution, principally to automotive jobbers and dealers, of his "Lusco" or "Lusco Weld" product, for use in repairing cracks and leaks in automobile radiators and motors and other metal devices; in trade journals, catalogs, advertising circulars, pamphlets, labels, etc., directly or by implication—

Represented that use of his product on broken or cracked automobile radiators and motors and on boilers and other mechanical devices resulted in a fusion, union or welding of the broken or cracked parts such as would be accomplished by a welding process, by means of such statement, and particularly use of words "weld," "welding" and "weldium," as "Lusco Cleaning & Welding Compound (containing Weldium) Welds as it Flows . . . Actually Welds Shut Leaks Directly Into Combustion Chamber," "Lusco Cylinder-Boiler Weld a Permanent Repair for Cracked Cylinders," "Weldium—the amazing synthetic metallic ore that puts the 'Weld' in Lusco Weld";

The facts being that while the product in question—a cement or glue—might stop or plug holes or cracks in metal objects, it was incapable of bringing about a fusion, union or consolidation of metal parts such as is accomplished by a welding process; and the word "Weldium" was merely a coined word used by said individual along with the words "weld" and "welding" to further the misleading impression;

With tendency and capacity to mislead and deceive a substantial number of jobbers, dealers, and members of the purchasing public and to cause them to purchase his product as a result of the erroneous belief so engendered:

Held, That such acts and practices as above set forth, were all to the prejudice 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.

Mr. Jerome W. Moss, 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 C. F. Lusk, an individual trading as C. F. Lusk Company, 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. Respondent, C. F. Lusk, is an individual, trading and doing business as C. F. Lusk Company with his office and principal place of business located at 6523 Euclid Avenue, Cleveland, Ohio.

PAR. 2. The respondent is now and for more than two years last past has been engaged in the sale and distribution of a product called "Lusco" used to repair cracks and leaks in radiators and water-cooled motors and for other industrial repair purposes. Said product is sold by the respondent—

ent in two forms, solid cubes and liquid. Respondent causes the said product when sold by him to be transported from his 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 his aforesaid business and for the purpose of inducing the purchase of his product Lusco, the respondent has circulated and is now circulating among prospective purchasers throughout the United States by U. S. mails, advertisements in newspapers and trade journals, by means of advertising folders, pamphlets, circular letters, labels and other advertising material all of general circulation, many false statements and representations concerning his said product, Lusco, among and typical of such false statements and representations are the following:

Lusco CLEANING & WELDING
COMPOUND
(Containing WELDIUM)

Welds as it Flows—Cleans as it Goes
3 Complete Services with One Product

- 1 Repairs Radiator Leakage
- 2 Welds Cracked Blocks
- 3 Cleans The System

Actually Welds Shut Leaks Directly Into Combustion Chamber

S
U C
L O
CYLINDER-BOILER
W E L D

90 Day Guarantee On
Radiator Leaks and Cracked
Blocks Repair with Lusco
Welding Cubes Make quick,
easy permanent repairs
the profitable Lusco Way.

a Permanent Repair

r
o D
F E CYLINDERS
K
C HEADS-BLOCKS-VALVE PARTS
A
R
C BOILER SECTIONS

and for GENERAL
INDUSTRIAL PURPOSES

*W E L D I U M—the amazing synthetic metallic
ore that puts the “Weld” in LUSCO Weld.

EASY TO USE . UNCONDITIONALLY GUARANTEED , PERMANENT
WELD

PAR. 4. The word "weld" is generally understood in the metal industry as a localized union or consolidation of metals, and usually is employed to make a joint that is expected to have strength and withstand stress. Welds are made by a number of processes. Some metals may be heated to temperatures below their fusion temperatures, and the consolidation may be brought about by pressure (hammering). Welds may also be made by heating to or above the fusion temperature, plus the application of pressure, or by simple fusion of the metals at the surfaces to be joined, with or without the addition of fused metal from a filler rod but without the application of pressure.

PAR. 5. 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 his product when used on broken, cracked or damaged radiators, boilers and water-cooled motors and other machinery will cause union, consolidation, fusion, and welding together of the broken, cracked or damaged parts of said metal objects such as would be accomplished by a welding process, and that repairs made by same are permanent and enduring and continue in the same state or status as before said metal objects were broken, cracked, or damaged; that said product contains a metallic ore called Weldium.

PAR. 6. The foregoing claims, statements, and representations are grossly exaggerated, false and misleading. In truth and in fact said product does not produce a weld, as that term is understood in the metal industry, and its use with metal objects would not effect a state or condition of being or becoming welded, or cause the uniform consolidation or fusion of metals, or metal parts such as would be accomplished by a welding process, nor would any sealing which may be effected by said product when used on cracked metals, or metal parts, be permanent in that such seal would continue enduringly in the same state or status without fundamental or marked change, or would have the permanence of properly made metal repairs by regular and customary welding procedure.

Respondent's product may stop or plug holes or cracks in metals, but such a method of repair is not a welding procedure and repairs made with such non-metallic materials would not be permanent or equal to that made by regular welding processes. Said product does not contain metal or metallic substances, but is composed of linseed oil and organic materials and is similar to a liquid cement or glue.

PAR. 7. 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 advertisements are true, and do induce the public to purchase substantial quantities of respondent's products, as a result of such belief.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the injury and 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 February 15, 1943, issued and subsequently served its complaint in this proceeding upon the respondent,

C. F. Lusk, an individual, trading as C. F. Lusk Company, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); 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. The respondent, C. F. Lusk, is an individual, trading and doing business as C. F. Lusk Company, with his office and principal place of business located at 6523 Euclid Avenue, Cleveland, Ohio. Respondent is now and for a number of years last past has been engaged in the sale and distribution of a product designated by him as "Lusco" and as "Lusco Weld" and intended for use in repairing cracks and leaks in automobile radiators and motors, and also in boilers and other metal devices. The product is sold by respondent principally to automotive jobbers and dealers.

PAR. 2. Respondent causes and has caused his product, when sold, to be transported from his place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his 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 his business and for the purpose of inducing the purchase of his product, respondent advertises his product by means of advertisements inserted in trade journals having general circulation among automotive jobbers and dealers, and also by means of catalogs, circulars, pamphlets, labels and other advertising material distributed among prospective purchasers. Among and typical of the statements and representations contained in respondent's advertising material are the following:

Lusco CLEANING & WELDING COMPOUND

(Containing WELDIUM)

Welds as it Flows—Cleans as it Goes

3 Complete Services with One Product

- 1 Repairs Radiator Leakage
- 2 Welds Cracked Blocks
- 3 Cleans The System

Actually Welds Shut Leaks Directly Into

Combustion Chamber

(Com. Ex. 7)

LUSCO
CYLINDER-BOILER
WELD

a Permanent Repair
For CRACKED Cylinders
Heads-Blocks-Valve Parts
Boiler Sections
and for General
Industrial Purposes (Com. Ex. 10)

*WELDIUM—the amazing synthetic metallic ore that puts the “Weld” in LUSCO Weld.

EASY TO USE . UNCONDITIONALLY GUARANTEED . PERMANENT
WELD

(Com. Ex. 10)

PAR. 4. Through the use of these statements and representations and others of similar import, and particularly through the use of the words “weld,” “welding,” and “weldium” to designate and describe his product and the results accomplished through the use thereof, respondent represents, directly or by implication, that the use of his product on broken or cracked automobile radiators and motors, and on boilers and other mechanical devices, results in a fusion, union, or welding of the broken or cracked parts of such metal objects such as would be accomplished by a welding process.

PAR. 5. The term “weld,” as generally defined and as understood in the metal industry, means a localized union or consolidation of metals. A weld usually is employed to make a joint which is expected to have strength and transmit stress. Welds are made by a number of processes. Some metals may be heated to temperatures below their fusion temperatures and the consolidation brought about by pressure (hammering). Welds may also be made by heating the metals to or above the fusion temperature with accompanying application of pressure, or by simple fusion of the metals at the surfaces to be joined, with or without the addition of fused metal from a filler rod but without the application of pressure.

PAR. 6. Respondent's product, which is sold in both liquid and solid cube form, is in the nature of a cement or glue. While the product possesses merit in that it may serve to stop or plug holes or cracks in metal objects, it is not a welding material and the use of it does not constitute a welding operation. The product is incapable of bringing about a fusion, union, consolidation, or welding of metal parts such as is accomplished by a welding process. The word “weldium” has no reference to any ingredient in the product but is merely a coined word used by respondent, along with the words “weld” and “welding,” to further the impression that the use of the product results in the welding of metals to which it is applied.

PAR. 7. The Commission therefore finds that the representations used by respondent in connection with his product, as set forth above, including the words “weld,” “welding,” and “weldium,” are erroneous and misleading.

PAR. 8. The use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a

substantial number of jobbers, dealers, and members of the purchasing public with respect to the nature of respondent's product and the results which may be effected through the use thereof, and the tendency and capacity to cause such persons to purchase substantial quantities of respondent's product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent as herein found 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); 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, C. F. Lusk, individually, and trading as C. F. Lusk Company, or trading under any other name, and his agents, representatives, 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 respondent's product designated "Lusco" and "Lusco Weld," or any other product of a substantially similar nature, under whatever name sold, do forthwith cease and desist from:

1. Using the word "weld," "welding," or "weldium," or any other word of similar import, to designate or describe respondent's product or the results accomplished through the use of such product.

2. Representing, directly or by implication, that the use of respondent's product will result in the fusion, union, consolidation, or welding of metal parts, or that the results accomplished through the use of respondent's product are such as are accomplished through a welding process.

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

Complaint

38 F. T. C.

IN THE MATTER OF
GULF OIL CORPORATION

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

Docket 4581. Complaint, Aug. 29, 1941—Decision, Apr. 4, 1944

Where a corporation engaged in interstate sale and distribution of its "Gulf Livestock Spray"; in advertisements thereof in magazines, newspapers, circulars and other advertising media, directly or by implication—

Represented that its said insecticide afforded complete protection to livestock from all insects, and that use thereof would cause milk production to increase and cows to be healthy;

The facts being that while product in question would usually kill insects on the stock at time of application, it would not afford complete protection as a repellent of others; its effectiveness depended upon a number of factors, including frequency and thoroughness of application, nature and extent of insect infestation, weather conditions, etc.; and while of indirect benefit in cases of decreased milk production or unhealthy cows, it was incapable of increasing milk production or causing cows to be healthy;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby cause it to purchase substantial quantities of such product:

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

Before *Mr. Andrew B. Duval*, trial examiner.

Mr. John M. Russell for the Commission.

Mr. R. J. Connor, Mr. J. S. Atkinson and Mr. Alex F. Smith, of Shreveport, La., and *Mr. John E. Green, Jr.*, of Houston, Tex., 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 Gulf Oil Corporation, 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. Respondent, Gulf Oil Corporation, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, having its office and principal place of business in the Gulf Building, Pittsburgh, Pa.

PAR. 2. Respondent is now and has been for more than two years last past engaged in the business of manufacturing, selling and distributing two insecticide products designated Gulf Livestock Spray and Gulf-spray. Respondent causes its said products, when sold, to be transported from its place of business in the State of Pennsylvania to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia.