

Complaint

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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.

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Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business in connection with the sale of its said insecticide products, in said commerce, and as an inducement for the purchase thereof by members of the purchasing public, respondent has caused and is now causing advertisements to be made in radio continuities and to be printed in road maps, magazines, newspapers, circulars, and in other publications and advertising literature distributed to the purchasing public throughout the various States of the United States which contain many false and misleading statements and representations respecting the nature and effectiveness of its said products. Among and typical of the statements and representations so made and used with regard to the product Gulf Livestock Spray are the following:

- * * * a light spraying of it gives a cow complete protection.
- "It's 'higher kill' protects our cows for a longer period than any other spray."
- * * * provides long-lasting insect repelling protection.
- * * * gets rid of these pests.

Will not taint milk.

Changes to Gulf Livestock Spray . . . give you 175 lbs. more milk a day!

It will assure you of healthy, contented cows.

* * * will not burn or blister the hides of animals on which it is used.

* * * its neutral oil base is non-irritating.

Mr. Hamilton, it's so pure you can gargle it!

Among and typical of the statements and representations so made and used with regard to the product Gulf Spray are the following:

Gulf Spray is the quickest, surest insecticide I know * * *.

It requires less Gulf Spray to do a thorough insect killing job because it is more effective.

It's sure death to flies, mosquitoes, even garden pests.

The surer insect killer.

Gulf Spray will put an absolute end to every insect it touches * * *.

Use Gulf Spray Insect Killer to banish moths, flies, mosquitoes and other household insects from your home.

If you want freedom from insect pests get some Gulf Spray * * *.

It quickly rids your home of fleas, mosquitoes, moths, roaches and ants.

Our Gulf Spray—though fatal to all insects is absolutely harmless to humans * * *.

Mr. Hamilton, it is so pure you can gargle with it.

Gulf Spray * * * never taints food * * *.

Gulf Spray contains up to 40% more Pyrethrum, which makes it just that much more effective as an insect killer.

* * * and it won't harm plants!

PAR. 4. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents directly or indirectly to consumers and prospective consumers that its product Gulf Livestock Spray affords complete protection to livestock from all insects; that its effects continue for a longer period of time than any other insecticide; that its effects are permanent or lasting; that its use will completely eliminate all insects; that it will not taint milk; that its use will directly cause milk production to increase; that its

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use will cause cows to be healthy; that it will not burn, blister or irritate the hides of animals; that it is harmless to humans and animals; and that its killing and repellent powers are more effective than those in any other insecticide.

Through the use of the aforesaid statement and representations and other similar thereto not herein set out, respondent represents directly and by implication that less Gulspray is required for effectiveness than any other insecticide; by the use of such words and expressions as "sure death," "surer," and "put an absolute end to," that Gulspray is 100% effective in killing all insects; by the use of such words as "banish," "ridding," "freedom," and "ride," that its effectiveness is complete and permanent; that it will not taint any food; that it contains 40% more Pyrethrum than any other insecticide; that the percentage of Pyrethrum in it in excess of that contained in other insecticides makes it that percent more effective than such other insecticides; that it will not harm plants; and that it is harmless to humans under any conditions.

PAR. 5. The statements and representations used and disseminated by the respondent in the manner above described are false, misleading and deceptive. In truth and in fact the use of the product Gulf Livestock Spray is not effective in protecting livestock from all types of insects; it is not effective for a longer period of time than all other insecticides; its effectiveness is not permanent or lasting; its use will not eliminate all insects; it will taint milk with which it comes in contact; its use will not cause an increase in milk production; its use will not cause cows to be healthy; it is not harmless to animals but will burn, blister or irritate the hides of animals if their skins are sprayed heavily therewith; nor is it harmless to humans if taken internally.

The product Gulspray's killing or repellent power is not more effective than all other insecticides. When used in equal quantities, Gulspray is not as effective as many other insecticides. Its effectiveness is not complete or permanent; it is not effective against all insects; it will taint food with which it comes in contact; it does not contain 40% more Pyrethrum than all other insecticides; the effectiveness of insecticides does not vary directly with the percentage of Pyrethrum contained in them; and the use of Gulspray will harm some plants.

The true facts are that the repellent value of said products is limited to that of a temporary repellent against some insects. Gulf Livestock Spray cannot be depended upon as a repellent of certain important flies which attack and annoy cattle. Gulspray cannot be relied upon to kill all garden insects. If applied in droplets or under high driving pressure it will harm some plants. Neither of said products will cause an increase in milk production but if a decrease in milk production is due to annoyances caused by lice, fleas, stable or horn flies, the use of Gulf Livestock Spray may be of value in preventing the continuance of such a decrease. Gulspray, to have any effect on insects must come in contact with them.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such statements and representations are true, and induces a substantial portion of the public, because of such erroneous and mistaken belief, to purchase respondent's said products Gulf Livestock Spray and Gulspray.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 29, 1941, issued and subsequently served its complaint in this proceeding upon the respondent, Gulf Oil Corporation, a corporation, charging it 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 the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; 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, Gulf Oil Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located in the Gulf Building, Pittsburgh, Pa. Respondent is now and for a number of years last past has been engaged in the business of manufacturing, selling, and distributing a product designated by it as "Gulf Livestock Spray," an insecticide designed for use on livestock.

PAR. 2. Respondent causes and has caused its product, when sold, to be transported from its place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in its 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 business and for the purpose of inducing the purchase of its product, respondent advertises its product by means of advertisements inserted in magazines, newspapers, circulars and other advertising media, all of which are distributed among the purchasing public generally throughout the United States. Among and typical of the statements and representations appearing in such advertisements are the following:

C. W. Wilkinson has a fine herd of 280 Jerseys on his dairy farm at Trussville, Ala. Mr. Wilkinson says: "Gulf Livestock Spray is a *lot cheaper* to use than other sprays. This is because a light spraying of it gives a cow complete protection."

Gulf Livestock Spray kills bloodsucking flies, lice, ticks—repels stable and horn flies. One spraying lasts all day (Comm. Ex. 4).

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Changes to GULF LIVESTOCK SPRAY—gets 175 lbs. more milk a day! Says C. E. Grimes of Fredericksburg, Pa., "I am very proud of my herd of 90 Holstein and Guernsey cows. They are first-class milk producers. My milk production used to average 2,300 lbs. a day during the summer months. Since I started using Gulf Livestock Spray it has averaged 2,475 lbs. The increased yield of milk more than pays for the cost of the spray. I recommend this spray as the best that money can buy" (Comm. Ex. 7 "d").

MR. HAMILTON DO YOU WANT "M-M"? . . . Sure you do, for "M-M" means More Milk which means More Money. GULF LIVESTOCK SPRAY will get you "M-M." It will assure you of healthy, contented cows AND HEALTHY COWS GIVE MORE MILK, hence . . . increased PROFITS (Comm. Ex. 7 "b").

PAR. 4. Through the use of these statements and representations and others of similar import, respondent has represented, directly or by implication, that its product affords complete protection to livestock from all insects, and that the use of the product will cause milk production to increase and cause cows to be healthy.

PAR. 5. While respondent's product when applied to livestock usually will kill such insects as may be present on the livestock at the time of the application, the product does not afford complete protection as a repellent of other insects which may later seek to attack the livestock. Generally speaking, the degree of effectiveness of the product as a repellent depends upon a number of factors, including the frequency and thoroughness of application, the nature and extent of the insect infestation, weather conditions, etc. As to some insects, the product affords measurable protection for a limited period of time, but as against certain other insects which frequently attack livestock it has little value as a repellent. The Commission therefore finds that while respondent's product possesses substantial merit, it is incapable of affording complete protection to livestock from insects, and that respondent's representations with respect to the effectiveness of the product are erroneous and misleading.

The Commission further finds from the evidence that the product is incapable of bringing about an increase in milk production or causing cows to be healthy. In those cases where there has been a decrease in milk production or where cows are unhealthy and such conditions are due to the presence of insects, the use of respondent's product may be of indirect benefit in affording a measure of protection against the insects. Respondent's advertisements, however, are not limited to such indirect benefit and are therefore erroneous and misleading.

PAR. 6. The use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the value and effectiveness of respondent's product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such 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 the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument; 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, Gulf Oil Corporation, a corporation, and its officers, 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 "Gulf Livestock Spray," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent's product affords complete protection to livestock from insects.

2. Representing, directly or by implication, that the use of respondent's product will cause cows to be healthy or cause an increase in milk production; provided, however, that this order shall not be construed as prohibiting respondent from representing that in those cases where an unhealthy condition of cows or a decrease in milk production is due to the presence of insects, respondent's product may be of benefit in affording a measure of protection against such insects.

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

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IN THE MATTER OF
MACDOUGAL BROTHERSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4990. Complaint, June 30, 1943—Decision, Apr. 11, 1944*

Where two partners, engaged in interstate sale and distribution of potatoes, which they grew in Steuben County, New York, and packaged in fifteen, fifty and hundred pound bags for sale to retail chain store purchasers and to jobbers or wholesalers who resold to retailers, by whom the smaller bags were generally sold without being opened and the larger ones frequently used for display for sale, and sale therefrom—

Sold said potatoes marked or branded "Steuben Maid Little Maine Potatoes Packed by MacDougal Brothers Avoca, New York"; notwithstanding fact potatoes in question, sold and distributed in competition with those actually produced in Maine and packaged in bags bearing marks or brands accurately indicating their origin, and in competition also with those produced in other States and not falsely marked as Maine potatoes, were not grown in the State of Maine—shippers of which generally use either the State's registered trade mark "STATE OF MAINE," as licensed to do, or brand and designate their product as "Maine potatoes," preferred by dealers and consumers in many States and usually selling for a higher price than those grown in New York and other Eastern States;

With effect of misleading and deceiving substantial numbers of dealers and the consuming public into the erroneous belief that such potatoes were grown in the State of Maine, and with capacity and tendency unfairly to divert trade from competitors who do not misrepresent the origin of their potatoes:

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

Before *Mr. John W. Addison*, trial examiner.
Mr. Carrel F. Rhodes for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Donald N. MacDougal and Dan A. MacDougal, individuals, doing business as MacDougal Brothers, hereinafter referred to as respondents, have 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:

PARAGRAPH 1. Respondent, Donald N. MacDougal and Dan A. MacDougal, are individuals, trading as MacDougal Brothers with their offices and principal place of business located at Avoca in the State of New York. Respondents are now and have been for several years last past engaged in the advertising, sale and distribution of potatoes.