

Complaint

IN THE MATTER OF

D. E. HAMIEL TRADING AS ALL-WINTER ANTI-FREEZE
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5016. Complaint, July 22, 1943—Decision, Apr. 25, 1944*

Where an individual, engaged in interstate sale and distribution of a so-called anti-freeze solution which he designated as "All-Winter Anti-Freeze" and "Chem-A-Cool"—

(a) Represented through use of term "Anti-Freeze" to designate his said product, and through statements in radio continuities, advertising folders, pamphlets, and other media, that his said product was an effective anti-freeze solution, which afforded protection to automotive cooling systems or engines against freezing, rust and corrosion, and was safe and dependable;

The facts being that, essentially a solution of calcium chloride, it was capable of causing and did cause serious damage to the cooling systems of automobiles and was neither dependable nor safe; and

(b) Failed to disclose in his said advertisements, damaging effects likely to result from use thereof in that such use might cause serious corrosion of parts of the cooling system and motor; stoppage of water passages, particularly in the radiator, with resultant overheating; and short circuit in the ignition system, necessitating replacement thereof;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, effectiveness, and safety of his said product, and thereby cause it to purchase substantial quantities thereof:

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. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Phil S. Bradford, of Columbus, 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 D. E. Hamiel, an individual, trading as All-Winter Anti-Freeze 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. The respondent, D. E. Hamiel, is an individual, trading as All-Winter Anti-Freeze Company, with his office and place of business located at 329-333 East Long Street, Columbus, Ohio.

PAR. 2. The respondent is now and for more than four years last past has been engaged in the manufacture, sale and distribution of a so-called anti-freeze solution designated "All-Winter Anti-Freeze," recommended

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for use in the cooling system of automobiles and for other internal combustion type engines. Said product is sold by the respondent to wholesale automotive supply houses for resale to retailers and the consuming public. Respondent causes his said product, when sold, to be transported from his said place of business in the State of Ohio to purchasers thereof located in various other States of the United States other than the State of Ohio 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 said product All-Winter Anti-Freeze, the respondent has circulated and is now circulating, among prospective purchasers throughout the United States, false advertisements concerning his said product by means of the United States mails and by means of advertising folders, pamphlets and other advertising material. Among and typical of such false statements and representations, circulated as aforesaid, are the following:

ALL-WINTER PERMANENT ANTI-FREEZE
THREE WAY CONTROL

Freezing Control
Corrosion Control
Seeping Control

GUARDS AGAINST FROZEN RADIATORS,
CRACKED BLOCKS
RUST AND CORROSION

One filling of All-Winter Anti-Freeze will protect the cooling system from freezing for an entire winter. In addition to containing rust and corrosion inhibitors, it will not attack rubber hose or gaskets.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly or by implication, that said product, All-Winter Anti-Freeze is a high quality "anti-freeze" solution which furnishes protection to the cooling systems of automobile and other type internal combustion engines against freezing, water seepage and corrosion, and prevents other damaging effects; that it is safe and dependable for use as recommended; that it will protect the entire cooling systems of automobiles against frozen radiators, cracked blocks, rust and corrosion; that its use will not cause rust or other damage to the hose connections, gaskets, and other parts of an automobile or the engine and that it will not evaporate or clog passages in the cooling system.

PAR. 5. The foregoing claims, statements and representations are grossly exaggerated, false and misleading. In truth and in fact respondent's product All-Winter Anti-Freeze is not a high quality "anti-freeze" solution as it is composed of a calcium chloride base and is inferior to anti-freeze solutions containing glycerine or alcohol bases. Said product will not prevent seepage and corrosion. It is not safe and dependable for use as recommended and is not a superior type of anti-freeze. It does not protect the cooling system of engines against corrosion, rust or other deterioration. Use of said product causes and has caused rust, corrosion,

clogged passages, and other serious damage to engines, radiators, ignition wires, spark plugs, hose connections, and to the exterior finish of automobiles. Said product evaporates and will clog passages in the cooling system.

For many years there has 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 "anti-freeze" 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 "anti-freeze," 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.

Respondent's representation that his said product is an "anti-freeze" leads the public to believe that said product is 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, from rust, corrosion, clogging, or other deleterious or damaging effects. Respondent's failure to inform the general public of the deleterious and damaging effects which result or may result from the use of his said product as an "anti-freeze" is misleading and deceptive.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations, disseminated as aforesaid, has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and advertisements are true and to induce, and does induce, the public to purchase substantial quantities of respondent's products as a result of such belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 22, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, D. E. Hamiel, an individual trading as All-Winter Anti-Freeze Company, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. No answer was filed by respondent. Thereafter, 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. Subsequently, the proceeding

regularly came on for final hearing before the Commission on the complaint, 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, D. E. Hamiel, is an individual, who formerly traded under the name All-Winter Anti-Freeze Company, with his office and place of business located at 329-333 East Long Street, Columbus, Ohio. For a year or more immediately preceding December 15, 1942, respondent was engaged in the sale of a so-called anti-freeze solution designated by him as "All-Winter Anti-Freeze" and as "Chem-A-Cool," recommended for use in the cooling system of automobiles. The sale of the product was discontinued by respondent on December 15, 1942.

PAR. 2. Respondent 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 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 disseminated various advertisements among prospective purchasers throughout the United States, such advertisements being disseminated by means of the United States mail, by radio continuities, and by advertising folders, pamphlets and other media. Among and typical of the statements and representations appearing in such advertisements were the following:

ALL-WINTER PERMANENT ANTI-FREEZE

THREE WAY CONTROL

Freezing Control

Corrosion Control

Seeping Control

GUARDS AGAINST FROZEN RADIATORS

CRACKED BLOCKS

RUST AND CORROSION

One filling of All-Winter Anti-Freeze will protect the cooling system from freezing for an entire winter. In addition to containing rust and corrosion inhibitors, it will not attack rubber hose or gaskets.

PAR. 4. Through the use of these statements and representations and others of a similar nature, respondent represented, directly or by implication, that his product was an effective "anti-freeze" solution which was capable of affording protection to automobile cooling systems and engines against freezing, and that the product was dependable and safe for use.

PAR. 5. Respondent's product was essentially a solution of calcium chloride. Engine tests conducted by the National Bureau of Standards establish that such preparations have highly injurious effects on compo-

nent parts of the cooling and ignition systems of automotive engines. Calcium chloride solutions cause serious corrosion of the water pump and radiator, and particularly of any aluminum parts such as cylinder heads. The solutions cause partial or complete stoppage of water passages, especially in the radiator, with resultant overheating. Having a great tendency to "creep," the solutions may leak into the engine cylinders, and in that event they cause serious damage to many engine parts. Because of the fact that rapid erosion of the water pump impeller shaft results from the use of such solutions, the solutions are soon sprayed over the outside of the engine. Calcium chloride solutions, being good conductors of electricity, may short circuit the ignition system and necessitate the replacement thereof. The record discloses a number of actual instances in which respondent's product not only proved ineffective as an anti-freeze but also caused serious damage to automotive engines and cooling systems.

The Commission therefore finds that the representations made by respondent with respect to his product, as set forth in paragraphs three and four hereof, were erroneous and misleading. The product was not an effective anti-freeze solution and was incapable of affording protection to automobile cooling systems or engines against freezing. Nor was the product dependable or safe for use. On the contrary, as set forth above, it was capable of causing and did in fact cause serious damage to the cooling system and engine of automobiles in which it was used.

For a number of years there have been on the market certain preparations known as "anti-freeze" preparations designed for use in the cooling system of automobiles as a protection against freezing. These preparations have proved effective and dependable for that purpose and their use does not result in damage to the cooling system or engine of the automobile. When a product is advertised as an "anti-freeze," the public associates it with these long-used, dependable products and believes that it is effective and safe for use. The Commission therefore finds that respondent's use of the term "Anti-Freeze" to designate and describe his product was misleading and, further, that respondent's advertisements with respect to his product were misleading and deceptive in that they failed to disclose the damaging effects which would result or were likely to result from the use of respondent's product.

PAR. 6. The acts and practices of the respondent, including the failure of respondent to disclose the injurious effects which would result or were likely to result from the use of his product, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, value, effectiveness, and safety of respondent's product, and the tendency and capacity to cause such portion of the public 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 (no answer having been filed by 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, D. E. Hamiel, individually, and trading as All-Winter Anti-Freeze 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 "All-Winter Anti-Freeze" and "Chem-A-Cool," or any other product of substantially similar composition, do forthwith cease and desist from:

1. Using the term "Anti-Freeze," or any other term of similar import, to designate, describe, or refer to respondent's product; or otherwise representing, directly or by implication, that respondent's product is an effective anti-freeze solution.
2. Representing, directly or by implication, that respondent's product affords protection to automotive cooling systems or engines against freezing.
3. Representing, directly or by implication, that respondent's product is dependable or safe for use.
4. Advertising, offering for sale, or selling respondent's product without clearly and conspicuously disclosing that the use of said product in an automotive vehicle may cause serious corrosion of parts of the cooling system and motor; stoppage of water passages, particularly in the radiator, with resultant overheating; and a short circuit in the ignition system, necessitating the replacement thereof.

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.

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IN THE MATTER OF

GENERAL BAKING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 2(d) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS
AMENDED BY ACT OF JUNE 19, 1936

Docket 5115. Complaint, Jan. 11, 1944—Decision, Apr. 25, 1944

Where a corporation engaged in the manufacture and interstate sale and distribution of bread, pastries and allied products, including its Bond Bread, in various sections, in substantial competition with others similarly engaged, and selling to customers competitively engaged with one another in the sale of such products to consumers and to others for resale thereto—

Contracted to pay and paid to some 35 preferred customers in various cities and elsewhere sums of money varying from 50 cents a week to \$525 a month as compensation for advertising services and facilities, on the understanding they would advertise the products concerned in newspapers and by handbills, bulletins and otherwise; without making such advertising allowances available on proportionally equal terms to other customers who competed therewith in distribution of its said products:

Held, That by making such contracts for payment, and payments of varying sums for advertising services and facilities to said favored customers, without making same available on proportionally equal terms to others who competed therewith in distribution of its bakery products, it violated and was violating provisions of subsection (d) of Section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Simpson, Thacher & Bartlett, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described has since June 19, 1936, violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C. Title 15, Sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent, General Baking Company, is a corporation, organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 420 Lexington Avenue, New York, N. Y.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of processing and manufacturing, offering for sale, selling, and distributing bread, pastries, and allied products, including its bakery bread which it distributes in various sections of the United States under the name of "Bond Bread." Respondent sells and distributes said products in commerce between and among the various States of the United States and the District of Columbia, and preliminary to or as a result of such sales, causes said products to be shipped and transported from the place of origin of the shipment to the purchasers thereof who are located in States of the United States other than the State of