

IN THE MATTER OF
RESEARCH MANUFACTURING CORPORATION,
HAROLD S. GUY AND J. L. SEAT

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

Docket 5063. Complaint, Oct. 15, 1943—Decision, July 20, 1944

Where a corporation and two individuals who controlled and directed it, engaged in the manufacture and interstate sale and distribution to garages and service stations for resale to the purchasing public, of their "Fre-Zex" antifreeze solution for automobile and other internal combustion engines; through statements in folders, circulars and other advertising material, directly and by implication—

- (a) Falsely represented that their said product furnished protection to the cooling system of automobile and other types of combustion engines against freezing and other damaging effects; was safe and dependable for use as recommended, and a superior permanent-type antifreeze, which protected the entire cooling system of automobile engines against corrosion, rust, and deterioration; and that use thereof would prevent rust or other damage to the hose connections, radiators, and other metal and rubber parts of the cooling system and finish of automobiles; and that it would not evaporate or clog passages in the cooling system;

Facts being said preparation, composed of a calcium chloride base, would corrode most metals, including iron, steel, brass, and aluminum, and had caused rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wires, spark plugs, hose connections and the exterior finish of automobiles, and resulted in leakage in the cooling systems of automotive engines; and, if it came in contact with spark plugs or ignition wires, would short circuit the ignition system and necessitate replacement thereof; and

- (b) Failed to inform of the danger of such deleterious and damaging effects, the general public, accustomed to believing that a product advertised as an anti-freeze may be used with safety and without causing results above set forth;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements were true, and of inducing it to purchase substantial quantities of said product as a result thereof: *Held*, That said 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. Herman M. Levy, of New Haven, Conn., for Research Manufacturing Corp. and *Bernard P. Kopkind*, Trustee in Bankruptcy of Research Manufacturing Corp.

Hurwitz & Hurwitz, of Boston, Mass., for Harold S. Guy.

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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 Research Manufacturing Corporation, a corporation, Harold S. Guy, individually, and as President of Research Manufacturing Corporation, and J. L. Seat, an individual, herein-after 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 the charges in that respect as follows:

PARAGRAPH 1. The respondent, Research Manufacturing Corporation, is a corporation, organized and existing under the laws of the State of Massachusetts, with its office and principal place of business located at 227 Park Square Building, Boston, Mass., and with its manufacturing plant located at Portland, Conn.

The respondent, Harold S. Guy, is an individual, and is president of the corporate respondent, Research Manufacturing Corporation, whose present address is now care Tobler Chemical Company, Portland, Conn.

The respondent, J. L. Seat, is an individual, who was formerly president of the corporate respondent, Research Manufacturing Corporation, whose address is care Pratt & Whitney, Hartford, Conn.

PAR. 2. The respondents, since June 20, 1942, and prior to December, 1942, were engaged in the manufacture, sale and distribution of a so-called anti-freeze solution designated "Fre-Zex," recommended for use in the cooling system of automobile and other internal combustion engines. Such product was sold by respondents to automotive supply houses for resale to retailers and the consuming public. Respondents caused their product, when sold, to be transported from their place of business in the State of Connecticut to purchasers thereof located in various other States of the United States and in the District of Columbia.

The respondents 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.

Respondent, Harold S. Guy, controls, formulates and directs the acts and practices of the respondent, Research Manufacturing Company, and J. L. Seat while president of the corporate respondent, Research Manufacturing Company, controlled, formulated and directed the acts and practices of said respondent.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their product Fre-Zex, the respondents have circulated among prospective purchasers throughout the United States, many false statements concerning their said product by means of folders, circulars, labels and other advertising material. Among and typical of such false statements and representations circulated as aforesaid are the following:

Permanent anti-freeze solution for liquid cooled motors.

Does not boil away.

Prevents rust and corrosion.

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Is not adversely affected by temperature of pressure fluctuations instant to usage in gas engines under varying climatic conditions.

Will not damage body finish; injure metal or rubber parts of the cooling system.

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 said product, Fre-Zex, is a high quality anti-freeze solution which furnishes protection to the cooling system of automobiles and other 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 system of automobiles against freezing; that it prevents rust and corrosion; that it will not boil away; that its use will not cause rust or other damage to the hose connections, gaskets and other metal parts of an automobile or other internal combustion engine; and that it will not evaporate or clog passages in the cooling system and will not damage body finish on automobiles.

PAR. 4. The foregoing claims, statements and representations are grossly exaggerated, false and misleading. In truth and in fact respondents' product Fre-Zex 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 glycerin or alcoholic bases. Said product does boil away. 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. The 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, gaskets, water pumps, and to the exterior finish of automobiles. Said product evaporates and will clog passages in the cooling system.

PAR. 5. 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.

Respondents' representations that their 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. Respondents' failure to inform the general public of the deleterious and damaging effects which result or may result from the use of their product as an anti-freeze is misleading and deceptive.

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 15, 1943, issued and subsequently served its complaint in this proceeding on the respondents, Research Manufacturing Corporation, a corporation; Harold S. Guy, individually, and as president of Research Manufacturing Corporation; and J. L. Seat, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the answers of the respondents thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answers thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, and brief in support of the complaint (no brief having been filed by the respondents 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, Research Manufacturing Corporation, is a corporation, which was organized under the laws of the State of Massachusetts on or about June 19, 1942. Said corporate respondent maintained its office and principal place of business at 227 Park Square Building, Boston, Mass., and maintained its manufacturing plant at Portland, Conn.

The respondent, Harold S. Guy, an individual, who presently resides at 274 Court Street, Middletown, Conn., was vice president of said corporate respondent in charge of sales until December 1942, and from that time until July 1943 was president of said corporate respondent.

The respondent, J. L. Seat, an individual, whose present address is care of Pratt & Whitney Aircraft Corporation, Hartford, Conn., was president of said corporate respondent from the date of incorporation until December 1942.

PAR. 2. The respondents, from June 20, 1942, were engaged in the manufacture, sale, and distribution of a so-called antifreeze solution designated "Fre-Zex," recommended for use in the cooling system of automobiles and other internal-combustion engines. Said product was sold by the respondents to jobbers, garages, and service stations for resale to the purchasing public. The sale of said product was discontinued in December 1942, and subsequent thereto the corporate respondent, Research Manufacturing Corporation, was duly adjudicated a bankrupt in the District Court of the United States for the District of Connecticut. During the period from June 20, 1942, to December 1942 the respondents caused their said product, when sold, to be transported from their place of business in the State of Connecticut to purchasers thereof located in various other States of the United States and in the District of Columbia. During the times mentioned herein, the respondents 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 respondents, Harold S. Guy and J. L. Seat, during the times mentioned herein, formulated, controlled, and directed the acts and practices of said corporate respondent.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said product Fre-Zex, the respondents circulated among prospective purchasers throughout the United States many false statements and advertisements concerning their said product by means of United States mails, by means of advertising folders, circulars, and other advertising material. Among and typical of such false statements and representations circulated as aforesaid were the following:

Permanent anti-freeze solution for liquid cooled motors

Does not boil away

Prevents rust and corrosion

It was created with one primary object . . . to provide a distinctly superior permanent type anti-freeze solution for a competitive market.

RESEARCH MANUFACTURING CORP. guarantees that "FRE-ZEX" if used in accordance with DIRECTIONS FOR USE as printed in this booklet, in normal motor cooling systems, will protect the cooling system against freezing and clogging from the formation of rust during a complete winter season. It further guarantees that "FRE-ZEX" will not (1) boil away; (2) damage body finish; (3) injure metal or rubber parts of the cooling system or (4) leak from a cooling system sufficiently tight to hold water.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents have represented, directly or by implication, that their product Fre-Zex furnishes protection to the cooling system of automobile and other types of combustion engines against freezing and other damaging effects; that it is safe and dependable for use as recommended; that it is a superior permanent-type antifreeze; that it protects the entire cooling system of automobile engines against corrosion, rust, and deterioration; that

its use will prevent rust or other damage to the hose connections, radiators, and other metal and rubber parts of the cooling system and finish of automobiles; 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, respondents' product Fre-Zex is composed of a calcium-chloride base and is not a superior type of antifreeze solution and is not a safe and dependable product for use as recommended. It does not protect the cooling systems of engines against corrosion, rust, or other deterioration. In fact, the use of said product will bring about corrosion on most metals, including iron, steel, brass, and aluminum, and causes, and has caused, rust, corrosion, clogged passages, and other serious damage to the engines, radiators, ignition wires, spark plugs, and hose connections and to the exterior finish of automobiles and results in leakage in the cooling systems of automotive engines. The use of respondents' product containing calcium chloride will give rise to persistent ignition troubles if any of the solution comes in contact with spark plugs or ignition wires and will short circuit the ignition system and necessitate the replacement thereof.

PAR. 6. For many years there have been on the market and sold to the general public throughout the United States, solutions for use in the water in the cooling systems of automobiles and other types of internal-combustion engines to prevent injury to such engines from freezing of the water used in the cooling system. These solutions are known as "antifreeze" and have proved dependable both from the standpoint of protecting the cooling system and other parts of the engine from cold and in not damaging any part of the engine or vehicle in which the engine is installed through rust, corrosion, clogging, or any other form of deterioration or injury.

When a product is advertised as an antifreeze, the public believes that it possesses the attributes found in these long-used, dependable products; that it may be used with safety in such cooling systems; that it will not cause rust, corrosion, clogging, or other deterioration or injury; and that it will protect the cooling system and other parts of the engine from cold.

Respondents' representations that their product is an antifreeze 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 corrosion, clogging, or other deleterious or damaging effects. Respondents' failure to inform the general public of the deleterious and damaging effects which result or may result from the use of their product as an antifreeze is misleading and deceptive.

PAR. 7. The use by the respondents of the foregoing false and misleading statements and representations disseminated as aforesaid has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and advertisements are true, and to induce, and has induced, the public to purchase substantial quantities of respondents' product as the result of such belief.

CONCLUSION

The aforesaid acts and practices of the respondents, 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, answers of the respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, and brief in support of the complaint (no brief having been filed by the respondents and oral argument not having been requested); 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 respondent, Research Manufacturing Corporation, a corporation, and its officers, representatives, agents, and employees, and the individual respondents, Harold S. Guy and J. L. Seat, and their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of their product designated "Fre-Zex" or any other product of substantially similar composition, 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, 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 have complied with this order.

Syllabus

IN THE MATTER OF
MORTON SALT COMPANY

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

Docket 4319. Complaint, Sept. 18, 1940—Decision, July 28, 1944

- Where a corporation engaged in the production of salt and in the competitive interstate sale and distribution thereof from its various plants or warehouses to wholesalers or jobbers for resale to the retail trade, to large retail purchasers such as cooperative and corporate chain stores, and to customers purchasing in large quantities for use in their manufacturing processes such as meat packers, tanners and many other industries;
- In selling its blue label plain and iodized salt on a delivered price basis at \$1.60 per case of 24 packages in less than carload lots and \$1.50 per case for car lots, subject to additional discount of 10 cents per case for purchase of 5,000 cases or more in any consecutive 12-month period, and another discount of 5 cents, or a total of 15 cents, for similar purchase of 50,000 cases or more—
- (a) Discriminated in price between purchasers of like grade and quality through making available said carload differential and price to customers who joined in purchase of a car for delivery to them at a specific destination, from which they paid price of delivery to their respective warehouses or places of business, and through making them available also at certain of its warehouses at which it permitted purchases at said carload lot price in any desired quantity;
 - (b) Discriminated in price between purchasers as aforesaid, through making available said 5,000 case discount of 10 cents on combined purchases of separate wholesalers and wholesale groups, and to the corporate purchasing agent of nearly 20,000 member retailer grocer purchasers, no individual purchaser of which groups qualified;
 - (c) Discriminated in price between purchasers as aforesaid through said 15 cent discount on 50,000 case purchases, benefit of which it extended to four retail store chains, combined purchases of all of whose stores located throughout the United States were sufficient to qualify therefor, but for which purchases of no single branch or retail store qualified, which discount in many cases permitted such retail chain grocers to sell its salt to the consuming public at prices lower than those at which wholesalers could reasonably sell it to their retail customers, and among the competitors of which chain stores were retailers who purchased salt from it at the \$1.50 carload lot price, or 5,000 case quantity discount of 10 cents; and
- In selling other salt than its blue label grade at list price plus transportation charges from its plant serving the customer's location under its "unit discount" schedule, pursuant to which it allowed one unit or approximately 5 per cent off list on carload purchases, and an additional unit discount to customers purchasing 50,000 or more cases of table salt during a 12-month period;
- (d) Discriminated in price between purchasers of like grade and quality through extending said carload unit discounts to less-than-carload customers who combined their purchases to form a carload under the so-called "pool car arrangement"; and