

IN THE MATTER OF
SLAGTER OIL & GREASE COMPANY

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

Docket 4720. Complaint, Mar. 4, 1942—Decision, Sept. 28, 1944

Where the distinctive emblem of the Pennsylvania Grade Crude Oil Association had come to indicate pure and unadulterated oil products derived from the Pennsylvania Grade oil fields—decidedly preferred by a substantial part of the purchasing public—and, along with the name “Pennsylvania” and derivatives therefrom, had come to acquire a definite secondary meaning when used in connection with motor and lubricating oils and greases, due to the activities of said long organized association of the refiners of motor oil produced from said fields and a large number of jobbers and distributors thereof, which had spent large sums to acquaint the purchasing public with oils made from such crude oil, and provided advertising for use by member refiners and distributors, and its emblem certifying that the oil sold under it was a pure unadulterated product derived from the Pennsylvania Grade oil fields, guaranteed by each member’s bond; and thereafter a corporation engaged in the compounding and blending of motor lubricating oils and greases and in the sale and distribution thereof to wholesalers and retailers for resale to the purchasing public, including products designated by it as its “Bonded Penn,” “Cream O’ Penn” and “Mr. Penn”—

- (a) Represented directly and by implication, through use of aforesaid brand names and such statements as “Bonded Penn 100% Pure Pennsylvania 1500 Mile Motor Oil,” “Cream O’Penn Motor Oil 100% Pure Pennsylvania; Made from Selected 100% Pure Pennsylvania Crude. Refined and Filtered by Latest and Most Improved Refining Methods,” “Mr. Penn 2,000 Mile Motor Oil,” picture of a Quaker on the containers of its “Mr. Penn” Oil, and display of the aforesaid Association emblem on its advertising circulars, that its aforesaid oil products were made entirely from oil derived from the Pennsylvania Grade oil fields; when in fact all of said products contained large amounts of oil from other fields;
- (b) Falsely represented that a bond had been given by it to guarantee the Pennsylvania Grade origin of its “Bonded Penn” motor oil;
- (c) Falsely represented that it was a member of the aforesaid Pennsylvania Grade Crude Oil Association; and
- (d) Falsely represented that it owned an oil field from which its products or some of them were obtained, through inclusion of words “Oil Field,” in characterization of its various business activities;

With tendency and capacity to mislead and deceive a substantial number of dealers and a substantial portion of the purchasing public with respect to the nature and origin of its products and its business status, and to cause such persons as a result to purchase substantial quantities of its products; and with result of placing in the hands of uninformed or unscrupulous wholesalers and retailers means and instrumentalities whereby they were enabled to mislead and deceive the purchasing public:

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. Edward E. Reardon* and *Mr. Miles J. Furnas*, trial examiners.
Mr. S. Brogdyne Teu, II and *Mr. William L. Pencke* for the Commission.

Mr. Guy S. Conrad, of Milwaukee, Wisc., 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 Slagter Oil & Grease Co., a corporation, hereinafter referred to as respondent, has 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, Slagter Oil & Grease Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 4253 North Port Washington Avenue in the city of Milwaukee, State of Wisconsin. For several years last past the respondent has been engaged in the business of selling and distributing motor and lubricating oils and greases to wholesalers and to retailers for resale to the purchasing public. Respondent causes its said products when sold to be transported from its place of business in the State of Wisconsin to purchasers thereof located in other States of the United States.

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

PAR. 2. The Pennsylvania Grade Crude Oil Association, is a non-profit association, organized in 1923, which has been in continuous operation since that time. Its membership is composed of practically all of the refiners of motor oil produced from the Pennsylvania grade oil field and a large number of jobbers and distributors of such oil. Its purpose has been and is to promote the sale of oil produced and derived from the Pennsylvania grade oil field and to establish and maintain high standard therefor, to which end large sums of money have been spent in advertising and other ways. The Association provides an emblem and advertising matter to be used by refiners and distributors signifying that they are members of the Association. The emblem certifies that the oil sold under it is a pure unadulterated oil product from the Pennsylvania grade oil fields, and a bond is given by each member as a guarantee of these facts. The emblem is quite distinctive in arrangement, shape, coloring and wording. As a result of the activity of the Association the emblem and insignia referred to, as well as the name Pennsylvania and derivations thereof, have acquired a definite secondary meaning to the public when used in connection with motor and lubricating oils and greases. They indicate pure and unadulterated oil products derived from the Pennsylvania grade oil fields, for which a substantial portion of the purchasing public has a decided preference.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of its products, the respondent has made, and now makes, false, misleading and deceptive statements and represen-

tations with respect to certain of its products by means of statements and emblems imprinted upon the containers in which such products are sold and distributed. Among and typical of such statements and emblems are the following:

Bonded Penn 100% Pure Pennsylvania 1500 Mile Motor Oil

Cream O'Penn Motor Oil 100% Pure Pennsylvania; Made From
Selected 100% Pure Pennsylvania Crude. Refined and Filtered
By Latest and Most Improved Refining Methods.

Mr. Penn 2,000 Mile Motor Oil

On the container in which "Mr. Penn" oil is sold and distributed the portrait of a Quaker is imprinted which figure has long been associated with the State of Pennsylvania, also an emblem simulating, in general appearance, the emblem of the Pennsylvania Grade Crude Oil Association.

Respondent has also distributed circulars and other advertising material to wholesalers and retailers of oil products bearing the genuine seal of the Pennsylvania Grade Crude Oil Association in connection with the offer for sale of oils not made entirely from oil derived from the Pennsylvania grade oil field. Said advertising material also contained the phrase "Jobbers—Oil Field."

PAR. 4. Through the use of the statements and labels appearing on the containers and the statements and representations in the advertising material set out in paragraph 3 hereof, the respondent has represented and now represents that its said products are made entirely from oil derived from the Pennsylvania grade oil fields; that a bond has been given to guarantee Pennsylvania grade origin as to the oil designated "Bonded Penn" motor oil; that it owns the oil field from which its products are obtained, and that it is a member of the Pennsylvania Grade Crude Oil Association.

The use by the respondent of the brand names "Bonded Penn," "Cream O' Penn" and "Mr. Penn," within themselves, constitutes representations that such products are oils made entirely from oil derived from the Pennsylvania grade oil fields.

PAR. 5. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, respondent's "Bonded Penn" oil, "Cream O'Penn" oil and "Mr. Penn" oil are not made entirely from oil derived from the Pennsylvania grade oil fields but contain large amounts of oil derived from oil fields other than the Pennsylvania fields. Respondent's product designated "Bonded Penn" oil is not bonded in any sense of the term. Respondent does not own the oil field from which its products are obtained but buys said products from others. Respondent, during the period mentioned herein, was not a member of the Pennsylvania Grade Crude Oil Association, and was not and is not entitled to use the official emblem thereof.

PAR. 6. The use by the respondent of the aforesaid false, deceptive and misleading statements and representations with respect to its products, disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial number of wholesalers, retailers and members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and

causes, and has caused, a substantial number of said purchasing public to purchase substantial quantities of respondent's products because of such erroneous and mistaken belief so engendered.

PAR. 7. The respondent's said acts and practices further serve to place in the hands of wholesalers and retailers a means and instrumentality whereby such persons may mislead and deceive the purchasing public with respect to the origin and quality of respondent's merchandise.

PAR. 8. 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 March 4, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, Slagter Oil & Grease Co., 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 by respondent of its answer to the complaint, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which a stipulation as to certain facts was entered into by the attorney for the Commission and the attorney for the respondent, such stipulation being in lieu of testimony and other evidence in support of or in opposition to the allegations of the complaint. Subsequently, the proceeding came on for hearing before the Commission upon the complaint, answer, stipulation of facts, report of the trial examiner upon the evidence, and brief in support of the complaint (no brief having been filed on behalf of respondent and oral argument not having been requested). Thereafter the Commission, upon motion of its Assistant Chief Counsel and after due notice to respondent, entered its order reopening the proceeding for the taking of testimony and other evidence in support of and in opposition to the allegations of the complaint. Subsequently, supplemental stipulations relating to certain facts not included in the original stipulation were entered into by the attorney for the Commission and the attorney for the respondent, after which the proceeding again came on for hearing before the Commission; and the Commission, having considered the entire record 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, Slagter Oil & Grease Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Wisconsin, with its principal office and place of business located at 4253 North Port Washington Avenue, Milwaukee, Wis. Respondent is now, and for a number of years last past, has been engaged in the compounding and blending of oils and greases, and in the sale and

distribution of motor and lubricating oils and greases to wholesale and retail dealers for resale to the purchasing public.

PAR. 2. Respondent causes and has caused its products, when sold, to be transported from its place of business in the State of Wisconsin to purchasers thereof located in various other States of the United States. Respondent maintains and has maintained a course of trade in its products in commerce among and between the various States of the United States.

PAR. 3. The Pennsylvania Grade Crude Oil Association is a non-profit association organized in 1923 and which has been in continuous operation since that time. Its membership is composed of practically all of the refiners of motor oil produced from the Pennsylvania Grade oil fields, and a large number of jobbers and distributors of oil made from Pennsylvania Grade crude oil. The purpose of the Association has been and is now to promote the sale of oil produced and derived from the Pennsylvania Grade oil fields and to establish and maintain high standards therefor. To this end the Association has over a period of the last several years spent large sums of money in advertising and in other ways to acquaint the purchasing public with oils made from Pennsylvania Grade crude oil.

The Association provides an emblem and advertising matter to be used by refiners and distributors, signifying that they are members of the Association. The emblem certifies that the oil sold under it is a pure, unadulterated oil product derived from the Pennsylvania Grade oil fields, and a bond is given by each member as a guarantee of these facts. The emblem is quite distinctive in arrangement, shape, coloring, and wording. As a result of the activity of the Association, its emblem, and the name "Pennsylvania" and derivations therefrom, have acquired a definite secondary meaning to the public when used in connection with motor and lubricating oils and greases. The emblem indicates pure and unadulterated oil products derived from the Pennsylvania Grade oil fields, for which a substantial part of the purchasing public has a decided preference.

PAR. 4. The respondent, for the purpose of inducing the purchase of its products, has made various statements and representations with respect thereto, such statements and representations being made by means of emblems, words and phrases used in advertising circulars and imprinted upon the containers in which respondent's products are packed and sold. Among and typical of such statements and representations are the following:

Bonded Penn 100% Pure Pennsylvania 1500 Mile Motor Oil

Cream O'Penn Motor Oil 100% Pure Pennsylvania; Made From Selected 100% Pure Pennsylvania Crude. Refined and Filtered By Latest and Most Improved Refining Methods.

Mr. Penn 2,000 Mile Motor Oil

Slagter Oil & Grease Co. Manufacturers—Compounders—Marketers * * *
Jobbers—Oil Field

On the containers in which respondent's "Mr. Penn" oil is packed and sold, the picture of a Quaker is imprinted, which figure has long been associated with the State of Pennsylvania. On respondent's advertising circulars there appears the emblem of the Pennsylvania Grade Crude Oil Association.

PAR. 5. Through the use of these statements and representations and others of similar import, respondent has represented, directly or by implication, that its oil products designated "Bonded Penn," "Cream O'Penn," and "Mr. Penn" are made entirely from oil derived from the Pennsylvania Grade oil fields; that a bond has been given by respondent to guarantee the Pennsylvania Grade origin of the oil designated "Bonded Penn" motor oil; that respondent is a member of the Pennsylvania Grade Crude Oil Association; and that respondent owns an oil field from which its products, or some of them, are obtained.

The brand names "Bonded Penn," "Cream O'Penn," and "Mr. Penn," as used by respondent, constitute representations within themselves that the products so designated are oils made entirely from oil derived from the Pennsylvania Grade oil fields.

PAR. 6. These representations are erroneous and misleading. None of respondent's oils designated "Bonded Penn," "Cream O'Penn," and "Mr. Penn" is made entirely from oil derived from the Pennsylvania Grade oil fields, but all of such products contain large amounts of oil derived from other fields. The oil designated "Bonded Penn" is not in fact bonded. Respondent is not, and has not, been a member of the Pennsylvania Grade Crude Oil Association, and is not entitled to use the emblem of the Association. Respondent does not own an oil field.

PAR. 7. The use by respondent of these erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial number of wholesale and retail dealers and a substantial portion of the purchasing public with respect to the nature and origin of respondent's products and with respect to respondent's business status, and the tendency and capacity to cause such persons to purchase substantial quantities of respondent's products as a result of the erroneous and mistaken belief so engendered.

Respondent's acts and practices serve also to place in the hands of uninformed or unscrupulous wholesale and retail dealers a means and instrumentality whereby such dealers are enabled to mislead and deceive the purchasing public.

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, a stipulation as to certain facts in lieu of testimony and other evidence entered into by the attorney for the Commission and the attorney for the respondent at a hearing held before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, brief

in support of the complaint (no brief having been filed on behalf of respondent and oral argument not having been requested), and supplemental stipulations of fact subsequently entered into by the attorney for the Commission, and the attorney for the respondent; 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, Slagter Oil & Grease Co., 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 of respondent's motor and lubricating oils and greases in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Pennsylvania," or the abbreviation or derivation "Penn," or any other abbreviation or derivation of such word, alone or in conjunction with any other word, to designate or describe products not composed entirely of oil derived from the Pennsylvania Grade oil fields; provided, however, that in the case of a product composed in part of oil derived from the Pennsylvania Grade oil fields, this order shall not be construed as prohibiting respondent from stating truthfully the percentage of such oil in such product.

2. Representing in any manner or by any means that products are composed in whole or in part of oil derived from the Pennsylvania Grade oil fields, when such is not the fact.

3. Using the picture of a Quaker in connection with products not composed entirely of oil derived from the Pennsylvania Grade oil fields.

4. Using the emblem of the Pennsylvania Grade Crude Oil Association, or any simulation thereof.

5. Representing in any manner or by any means that respondent is a member of the Pennsylvania Grade Crude Oil Association.

6. Representing through the use of the word "Bonded," or in any other manner or by any other means, that a bond has been given by respondent to guarantee the origin of its products, unless such a bond has in fact been given by respondent.

7. Using the words "oil fields," or any other words of similar import, to designate or describe respondent's business; or otherwise representing, directly or by implication, that respondent owns an oil field.

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.

Complaint

IN THE MATTER OF

NEW YORK MERCHANDISE COMPANY, INC.

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

Docket 4765. Complaint, May 26, 1942—Decision, Sept. 28, 1944

Where a corporation engaged in the interstate sale and distribution of numerous articles, including tooth brushes—

Represented directly or by implication that certain of its tooth brushes were designed by certain physicians, dentists, or dental surgeons named "Dr. Strong," "Dr. Pasteur," or "Dr. Pasteur, Jr.," through adoption and use as trade names therefor of the aforesaid names, which it displayed upon the brushes and upon their cartons and in depictions in its catalogues;

Notwithstanding the fact they were not designed by anyone thus named, but by a physician who had for many years been connected with its business;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the identity, origin, and design of said brushes, and to cause its purchase of substantial quantities thereof as a result of the erroneous belief so engendered:

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. Clyde M. Hadley* and *Mr. John W. Addison*, trial examiners.
Mr. B. G. Wilson for the Commission.
Mr. David J. Moscovitz, of New York City, for respondent.

COMPLAINT ¹

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 the New York Merchandise Co., Inc., 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. The respondent, New York Merchandise Co., Inc., is a corporation, duly chartered, organized and existing under and by virtue of the laws of the State of New York with its principal office and place of busi-

¹ The complaint is published as amended by order dated October 6, 1943, which substituted paragraphs 2, 3 and 4 as published herewith for the correspondingly numbered paragraphs in the original complaint, and which further provide—

"That the testimony and other evidence heretofore introduced in support of, and in opposition to the allegations of the complaint, insofar as the same may be competent and material, shall be considered and is hereby made applicable to the complaint as amended," and

"That a copy of this order shall be served upon the respondent by registered mail and that said respondent shall, within 20 days after the service thereof, be permitted to file an answer to said amended complaint, and to introduce evidence in opposition to the allegations thereof, if it shall so desire."