

Syllabus

IN THE MATTER OF

ELI EGHAN, TRADING UNDER HIS OWN NAME AND
ALSO AS OX'O-GAS COMPANY

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

Docket 5040. Complaint, Sept. 3, 1943—Decision, Jan. 23, 1945

Where an individual engaged in interstate sale and distribution of a gasoline additive, or a solution designed to be mixed with gasolines for use as a motor fuel, under designation "Ox'o," and of a gasoline to which said Ox'o had been added, designated "Ox'o-Gas"; through statements on labels attached to the containers of said Ox'o and through advertisements thereof in newspapers and circulars and other advertising material, directly or by implication—

- (a) Falsely represented that his products greatly increased the combustion efficiency and power of an internal combustion engine and the mileage supplied thereby, and provided quicker starting and faster pickup; the facts being that laboratory tests by the National Bureau of Standards, and the testimony of the expert who supervised them established that his said products were wholly incapable of accomplishing said results; and
- (b) Falsely represented that his said "Ox'o" solution had been approved by major oil companies for blending with their gasoline; the facts being that while certain companies had stated to him that their examination of the product did not disclose any detrimental effects resulting from its use, none of the major oil companies had approved the solution;

With the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the value, properties, and efficiency of his products, and thereby to cause it to purchase substantial quantities 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.

As respects the validity of claims to the effect that a certain gasoline additive greatly increased the combustion efficiency and power of an internal combustion engine and the mileage supplied thereby and provided quicker starting and faster pickup: Evidence of certain road tests with automobiles and motor busses made by the seller's representative and by purchasers of the product—results of which, if acceptable, would indicate a product of substantial merit—was not sufficient to meet evidence consisting of laboratory tests made by the National Bureau of Standards with an automobile engine, electro-dynamometer and other necessary equipment, and testimony of the expert who conducted them, since said road tests, unlike the laboratory tests, do not permit adequate control or allowances for a great number of variables including such factors as engine temperatures, wind velocity and direction, effects of the road (surface conditions, curves and grades) and traffic density or control.

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Joseph Callaway for the Commission.

Mr. James P. Kohler, *Mr. James P. Kohler, Jr.*, *Mr. Joseph H. Denmark* and *Mr. John Hoxie*, of New York City, 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 Eli Eghan, trading under his own name and also as Ox'o-Gas Company, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Eli Eghan, is an individual, doing business under his own name and also as Ox'o-Gas Company with his principal place of business at No. 3 West Columbia Avenue, Palisades Park, N. J.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of a solution for mixing or blending with gasoline, when the gasoline is to be used as a motor fuel, which solution is designated by him as Ox'o. During the time aforementioned the respondent has also engaged in the sale and distribution of gasoline mixed with said solution, which is designated by him as Ox'o-Gas.

In the course and conduct of his business, the respondent causes said products when sold to be transported from his place of business in the State of New Jersey to the 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 said products 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 said business, and for the purpose of inducing the purchase of his said products in commerce, respondent has made, and is now making certain extravagant, false, deceptive and misleading statements and representations regarding the value and efficacy and effect of his said products, by means of advertisements inserted in newspapers, circulars and advertising blotters, circulated generally among the purchasing public, and in various other ways. Typical representations are as follows:

GASOLINE IS AMMUNITION

Use it Wisely with Ox'o

OX'O Saves Gas For DEFENSE and VICTORY

Saves MONEY for DEFENSE BONDS

Per Official Tests by State and city of New York, Hudson County Municipalities, Contacted Automotive Engineers, and Oil Concerns.

OX'O added to ANY gasoline, Increases Power and Mileage up to 33%, Eliminates Carbon and Knock, Saves Wasted (unburned) Gasolines.

Join thousands of motorists, truckers and buses using OX'O and realizing SAVINGS AND EFFICIENCY.

To convince yourself, try a tankful of OX'O BLEND GAS or add OX'O to ANY gasoline in your tank and let 4 gallons of OX'O blend gas give you the mileage of 5 gallons of untreated gasoline.

OX'O-GAS

Will keep your motor free from carbon and reduce your gasoline cost.

An Auxiliary Adjunct Gasoline Fuel that when blended with ANY gasoline

Increases	Eliminates	Renders	Substantially
Combustion	Carbon	Smoother	Reduces
Efficiency	Knock	Operation	Noxious
Power and	Cleans	Quicker Start	Gases and
Mileage	Sticky Valves	Faster Pickup	Fumes
Up to 33%			

In any Internal Combustion Engine, and keeps a Motor in Perfect Condition.

Approved by Major Oil Companies to blend their gasolines.

OX'O-GAS FOR MAXIMUM POWER, BETTER PERFORMANCE, NO CARBON AND GREATER ECONOMY.

PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning not specifically set out herein, the respondent has represented and is now representing among other things, that Ox'o added to any gasoline or Ox'o-Gas, when used in internal combustion engines, increases combustion efficiency, power and mileage up to 33%; that it eliminates carbon knocks; that it cleans sticky valves; that it furnishes smoother operation, quicker starting and faster pickup; that it substantially reduces noxious gases and fumes; that it keeps a motor in perfect condition; that official tests by the State of New York and different municipalities, automotive engineers and oil concerns have proven that the use of Ox'o and Ox'o-Gas by motorists saves gas and money; that major oil companies have approved the blending or mixing of Ox'o with their gasolines; that thousands of motorists, truckers and buses are realizing savings and obtaining better motor efficiency from the use of Ox'o and Ox'o-Gas.

PAR. 5. The foregoing representations are extravagant, false, deceptive and misleading in the following respects:

The addition of Ox'o to gasoline or the use of Ox'o-Gas in internal combustion engines does not increase combustion efficiency of the engine; does not increase engine power or mileage; does not eliminate carbon knock, nor does it have any appreciable effect thereon; does not clean sticky valves; does not furnish smoother operation or quicker starting or faster pickup; does not reduce noxious gases or fumes. Its effect on the motor is not different from ordinary gasoline. The purported tests referred to in the advertising were neither accurate nor conclusive. The use of Ox'o or Ox'o-Gas by motorists has not and will not save either gas or money. Major oil companies have not approved Ox'o to blend with their gasolines.

PAR. 6. The use by the respondent of the foregoing extravagant, false, deceptive and misleading statements and representations, disseminated as aforesaid, in connection with the offering for sale and sale of his products in commerce has had and now has the capacity and the tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and into the purchase of substantial quantities of such products in commerce because of such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the respondent 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 September 3, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Eli Eghan, an individual trading under his own name and also as Ox'o-Gas Company, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the filing of respondent's answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office by 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 briefs in support of and in opposition to the complaint (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, Eli Eghan, is an individual, doing business under his own name and also under the trade name Ox'o-Gas Company, with his principal place of business located at No. 3, West Columbia Avenue, Palisades Park, N. J. Respondent is now, and for a number of years last past has been, engaged in the sale and distribution of a solution known as a gasoline additive, that is, a solution designed to be mixed or blended with gasoline which is to be used as a motor fuel. The solution is designated by respondent as "Ox'o." Respondent also sells gasoline to which the solution Ox'o has been added, such gasoline being designated as "Ox'o-Gas."

PAR. 2. Respondent causes and has caused his products, when sold, to be transported from his place of business in the State of New Jersey to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and has maintained a course of trade in his products in commerce among and between 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 products, respondent has made various statements with respect to the value, properties and efficiency of the products, such statements being made by means of labels attached to the containers in which the solution Ox'o is packaged and sold, and also by means of advertisements inserted in newspapers and circulars and other advertising material distributed among prospective purchasers.

Through the use of these statements respondent has represented, directly or by implication, that his products greatly increase the combustion

efficiency and power of an internal combustion engine and the mileage supplied by the engine; that the products provide quicker starting and faster pickup; and that the solution Ox'o has been approved by major oil companies for blending or mixing with their gasolines.

PAR. 4. In August, 1941, respondent's solution was examined and tested by the National Bureau of Standards, such action being taken at the request of the Coordinator of Petroleum for National Defense, submitted through the Bureau of Mines, Department of the Interior. The tests were laboratory tests made with an automobile engine, an electric dynamometer and other necessary equipment, and appear to have been conducted with care and thoroughness. The report of the Bureau of Standards showing the results of these tests forms a part of the record in the present proceeding, together with the testimony of the Bureau of Standards expert who supervised the tests. This evidence establishes that respondent's products are wholly incapable of increasing the combustion efficiency or power of an internal combustion engine or the mileage supplied by the engine. They are likewise incapable of providing quicker starting or faster pickup.

Nor has the solution been approved by major oil companies, although certain companies have stated to respondent that their examination of the product did not disclose that any detrimental effects resulted from its use.

There was introduced on behalf of respondent evidence with respect to certain tests of the solution which had been made by respondent's representative, and also by purchasers of the product. If acceptable, the results of these tests would indicate that the product possesses substantial merit. The tests, however, appear not to have been made in a scientific manner, and their accuracy is open to serious question. The tests were not laboratory tests made under proper controls, as were the Bureau of Standards tests, but were "road tests"—that is, tests made by using respondent's solution in automobiles and motor buses which were in operation on the streets and highways. In the opinion of the Commission, such tests are not comparable as to accuracy or dependability with the laboratory tests made by the Bureau of Standards. As pointed out in the Bureau's report:

* * * The reason for this is quite obvious. In the laboratory, one factor can be varied at a time with all other test conditions under adequate control. Results on the road are affected by a great number of variables which can not be completely controlled or allowed for. Among these factors are: engine temperatures, effects of wind velocity and direction, effects of the road (surface condition, curves and grades), and effects of traffic density or traffic control. Consequently successive road tests commonly will show appreciable differences in mileage per gallon of fuel when the same fuel is used and every effort is made to duplicate the test run. (Com. Ex. No. 8-E)

After consideration of all of the evidences introduced by respondent, the Commission is of the opinion that it is insufficient to meet the evidence introduced in support of the complaint.

PAR. 5. The Commission therefore finds that the representations made by respondent with respect to his products, as set forth in paragraph 3 hereof, are 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, properties, and efficiency of respondent's products, and the tendency and capacity to cause such portion of the public to purchase substantial

quantities of the products 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 the 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 briefs in support of and in opposition to the complaint (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, Eli Eghan, individually, and trading as Ox'o-Gas 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 solution designated "Ox'o" and respondent's gasoline designated "Ox'o-Gas," or any other products of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's products increase the combustion efficiency or power of an internal combustion engine or the mileage supplied by such engine.

2. That said products provide quicker starting or faster pickup.

3. That said product Ox'o has been approved by major oil companies.

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.

Order

IN THE MATTER OF

CLAIROL, INC. AND JOAN GELB, LEON A. SPILO, AND
MORRIS GELB

MODIFIED CEASE AND DESIST ORDER

Docket 3615. Order, January 25, 1945

Modified order, pursuant to provisions of Section 5 (i) of the Federal Trade Commission Act, and in accordance with decree below referred to, in proceeding in question, in which original order issued on October 8, 1941, 33 F.T.C. 1450, and in which the Circuit Court of Appeals for the Second Circuit, on August 14, 1944, *Gelb v. Federal Trade Commission*, 144 F. (2d) 583, 39 F.T.C. 694, rendered its opinion, and on September 19, 1944 issued its decree modifying the Commission's aforesaid order in certain respects and affirming the same as therein modified;

Requiring respondent individuals, in connection with the offer, etc., in commerce, of respondents' cosmetic preparations, to cease and desist from misrepresenting their nature, properties, source, and safety, as in said order in detail below set out.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission, and it appearing that on October 8, 1941, the Commission made its findings as to the facts herein and concluded therefrom that the respondents, Joan Gelb, Leon A. Spilo and Morris Gelb had violated the provisions of Section 5 of the Federal Trade Commission Act and on October 8, 1941 issued and subsequently served its order to cease and desist upon said respondents; and it further appearing that on September 19, 1944, the United States Circuit Court of Appeals for the Second Circuit issued its decree modifying the aforesaid order in certain respects and affirming said order as therein modified.

Now therefore, Pursuant to the provisions of Subsection (i) of Section 5 of the Federal Trade Commission Act, the Commission issues this, its modified order to cease and desist in conformity with said decree.

It is ordered, That said individual respondents, Joan Gelb, Leon A. Spilo and Morris Gelb, their representatives, agents 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 their cosmetic preparations designated generally as "Clairol" and more specifically designated as "Instant Clairol" and "Progressive Clairol," or any other preparations of substantially similar composition or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from:

1. Representing that said preparations are not hair dyes.
2. Representing that said preparations restore the natural or youthful color of the hair.
3. Representing that the effect produced upon the color of the hair by the use of said preparations is permanent.
4. Representing that said preparations supply nourishment to the hair.
5. Representing that said preparations are made or compounded in France.