

IN THE MATTER OF
EUGENE CLEMENT D' ART, TRADING AS VICTORY
COAL SAVER MFG. CO.

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

Docket 5076. Complaint, Nov. 2, 1943—Decision, Mar. 8, 1945

Where an individual engaged in the interstate sale and distribution of his "Victory Coal Saver" chemical powder for use on coal, composed of about 90 percent common salt and small percentages of potassium permanganate and other substances, and contained in 8-ounce packages which sold usually for \$1.00 each—

- (a) Represented, directly or by implication, through advertisements in circulars, circular letters and other advertising literature, that the use of his product would effect savings up to fifty percent in coal consumption; increase the heat supplied by coal; cause coal to burn more slowly, evenly and thoroughly; reduce smoke and ash; and prevent the formation of soot in chimneys and aid in the removal of soot already formed;

The facts being, as established by an examination and analysis by the United States Bureau of Mines together with the testimony of the Bureau's expert who prepared the report thereon, that said product was wholly incapable of producing any of the results above claimed therefor;

- (b) Represented as aforesaid, that the product or the principal ingredient therein had been endorsed or approved by the United States Bureau of Mines for use in preventing and removing soot;

The facts being that neither said product nor any ingredient thereof had been endorsed or approved by said Bureau; while salt, when properly used in sufficiently high concentrations, is recognized by the Bureau as an effective soot remover, the amount provided by his product was so small as to be valueless from a practical viewpoint, since, to be effective, approximately eighty times the amount of salt provided by a package of the product would have to be used for each ton of coal treated;

- (c) Falsely represented or implied, through the use of the words "Coal Saver" in his trade name and the designation of his product, that use thereof would effect a saving in coal consumption;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to 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. J. Earl Cox*, trial examiner.

Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Eugene Clement d'Art, an individual, trading as Victory Coal Saver Mfg. Co., hereinafter referred to as the

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 interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, is an individual, trading under the name and style of Victory Coal Saver Mfg. Co., with his office and principal place of business located at 32 North Pearl Street, Albany, N. Y. Respondent is now, and for approximately one year last past has been, engaged in the sale and distribution of a chemical preparation designated "Victory Coal Saver," advertised and recommended by respondent for use in increasing the calorific value of coal, and thereby effecting a saving in fuel consumption. Said preparation is composed of approximately 90 percent sodium chloride or common salt, with a small percentage of potassium permanganate and other minerals.

PAR. 2. In the course and conduct of his said business, respondent causes said product, when sold, to be shipped from his place of business in the State of New York 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 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 promoting the sale of said "Victory Coal Saver," respondent has made false, misleading and deceptive representations by means of pamphlets, circulars, and other advertising literature disseminated through the United States mails. Among and typical of the representations made by the respondent are the following:

Save Coal Now—when you need it most, when the Nation needs it most. Victory Coal Saver brings you savings of 30 to 50 percent on coal. More Heat with Less Coal

Victory Coal Saver causes the fuel to burn more slowly, evenly, intensely and thoroughly, actually giving more heat with less coal

Victory Coal Saver retards combustion, at the same moment generating oxygen. As a result coal burns more slowly, intensely and thoroughly. Waste of combustible gases and substance is eliminated. Less Coal Generates More Heat

Savings with a coal water heater or small stove, properly managed, average 40 to 50%

Savings with a furnace properly managed average 20 to 30% during the day, as high as 60% at night.

You can earn \$5.00 in 20 minutes with very little labor, and do so repeatedly through treating all the coal you use with Victory Coal Saver.

The U. S. Bureau of Mines advises:

"Ingredient A prevents formation of soot in chimneys and preventing soot from forming cuts down coal bills. Ingredient A also helps get rid of soot already formed. Investigation shows Ingredient A becomes volatilized and forms a vapor which settles on the surface of soot, reducing its ignition temperature to 166 degrees. At 166 degrees the soot catches fire and burns away."

In its report the U. S. Bureau of Mines names the ingredient. In order to protect our formula, we have replaced the actual name by "Ingredient A."

The U. S. Bureau of Mines cannot be wrong. The U. S. Bureau of Mines' verdict cannot be disputed. In purchasing Victory Coal Saver you not only secure the savings and benefits mentioned by the U. S. Bureau of Mines but the additional action of three more ingredients.

PAR. 4. By and through the use of the foregoing statements and representations the respondent has represented and now represents, directly and by implication, that the use of his product "Victory Coal Saver" will effect savings of 30 to 50 percent in the consumption of coal, will cause coal to burn more slowly, evenly, intensely, and thoroughly, will give more heat with less coal, will retard combustion, generate oxygen, eliminate waste of combustible gases and substance, and increase the calorific value of coal.

Respondent has also thereby represented, directly and by implication, that treatment of coal with "Victory Coal Saver" will result in savings averaging from 40 to 50 percent with a properly managed coal water heater or small stove, and savings averaging from 20 to 30 percent with a properly managed furnace during the day, and as high as 60 percent at night, and will enable an individual to earn \$5.00 in 20 minutes and to do so repeatedly with very little labor.

Respondent has also represented, directly and by implication, that an agency of the United States Government, the U. S. Bureau of Mines, has endorsed the use of said product or the principal ingredient thereof and has advised that said "Ingredient A" prevents formation of soot in chimneys or gets rid of soot already formed, and reduces the ignition temperature of soot to 166 degrees and causes it to catch fire and burn away.

PAR. 5. In truth and in fact, respondent's product "Victory Coal Saver" will not measurably affect the heat, smoke, ash or gases resulting from the burning of coal or increase the calorific value thereof. Its use will not cause savings of 30 to 50 percent or any other percentage of savings on coal; will not create more heat with less coal; will not cause the fuel to burn more slowly, evenly, intensely and thoroughly; will not retard combustion, generate oxygen, or eliminate waste or combustible gases or substance; will not cause average savings of 40 to 50 percent or any other percentage with a coal water heater or small stove under any conditions; will not cause average savings of 20 to 30 percent with a furnace during the day, or as high as 60 percent at night, or any other appreciable savings under any conditions of care and management. Treating coal with "Victory Coal Saver" will not enable a person to earn \$5.00 in 20 minutes, or any other amount of money, or to do so repeatedly by the use of "Victory Coal Saver."

The so-called "Ingredient A" in respondent's product is common salt, which in sufficiently high concentrations may be an effective soot remover. However, in the quantity recommended by respondent in the treatment of coal with "Victory Coal Saver," which is equivalent to 22 pounds per ton of coal treated, or 1% of the weight of coal treated, said "Ingredient A" will not cause any effective reduction in the formation of soot or eliminate soot already formed. The use of common salt or "Ingredient A" will not reduce the ignition temperature of soot to 166 degrees.

The use by respondent of the trade names "Victory Coal Saver" and "Victory Coal Saver Mfg. Co." is misleading and deceptive in that they imply to the consuming public that the use of said product will effect a saving in coal consumption, when such is not the fact.

PAR. 6. The use by the respondent of the foregoing false, misleading and deceptive representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing and consuming public into the erroneous and mistaken belief that said representations are true, and into the purchase of substantial quanti-

ties of respondent's product because of such erroneous and mistaken beliefs.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 2, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Eugene Clement d' Art, an individual, trading as Victory Coal Saver Mfg. Co., 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 to the complaint, testimony and other evidence in support of the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it (no evidence being offered by respondent), and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, answer, 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, Eugene Clement d' Art, is an individual, who for a period of a year or more immediately preceding November 22, 1943, was engaged in business under the trade name "Victory Coal Saver Mfg. Co.," with his office and principal place of business located at 32 North Pearl Street, Albany, N. Y. Respondent was engaged in the sale and distribution of a product designated by him as "Victory Coal Saver," a chemical preparation designed for use on coal.

PAR. 2. Respondent caused his product, when sold, to be transported from his place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondent maintained a course of trade in his product in commerce among and between various States of the United States.

PAR. 3. In the course and conduct of his business and for the purpose of inducing the purchase of his product, respondent advertised the product by means of circulars, circular letters, and other advertising literature distributed among prospective purchasers. In these advertisements respondent represented, directly or by implication, that the use of his product would effect savings up to fifty percent in coal consumption; increase the heat supplied by coal; cause coal to burn more slowly, more evenly and more thoroughly; reduce smoke and ash; prevent the formation of soot in chimneys and aid in the removal of soot already formed; and that the product or the principal ingredient therein had been endorsed or approved

by the United States Bureau of Mines for use in preventing and removing soot.

PAR. 4. Respondent's product, which was in powdered form, was composed of approximately 90 percent sodium chloride (common salt) and small percentages of potassium permanganate and other substances. The product was packaged and sold to the public in 8-ounce packages which sold usually for \$1.00 each. The directions supplied by respondent for the use of the product were as follows:

DIRECTIONS

TO TREAT ONE TON: Dissolve contents of Standard \$1.00 Package in 4 gallons warm water: Sprinkle evenly over coal.

TO TREAT LARGER QUANTITIES: Use contents of Standard \$1.00 Package dissolved in 4 gallons warm water per ton, i.e., to treat two tons, contents of two Standard \$1.00 Packages in 8 gallons of warm water, etc.

TO TREAT SOFT COAL: Use twice the amount of water indicated above. (Comm. Ex. 1)

PAR. 5. At the request of the Commission the product was examined and analyzed by the United States Bureau of Mines, and the report of the Bureau forms a part of the record in the present proceeding, together with the testimony of the Bureau's expert who prepared the report. This evidence establishes that the product was wholly incapable of producing any of the results claimed for it by respondent. The use of the product did not effect any saving in coal consumption, nor did it increase the heat supplied by coal. The product was incapable of causing coal to burn more slowly, more evenly, or more thoroughly. It had no effect upon smoke or ash. It was likewise incapable of preventing the formation of soot or aiding in the removal of soot.

Nor has the product or any ingredient therein been endorsed or approved by the United States Bureau of Mines for use in the prevention or removal of soot or for any other purpose. While salt, when properly used in sufficiently high concentrations, is recognized by the Bureau as an effective soot remover, the amount provided by respondent's product was so small as to be without significance and wholly valueless from a practical viewpoint. To be effectual, approximately eighty times the amount of salt provided by a package of the product would have to be used for each ton of coal treated.

PAR. 6. The Commission therefore finds that the representations made by respondent with respect to his product, as set forth in paragraph 3 hereof, were erroneous and misleading. Moreover, the words "Coal Saver," used by respondent to designate and describe his product and as a part of respondent's trade name, constituted within themselves an erroneous and misleading representation, in that they represented or implied that the use of the product would effect a saving in coal consumption.

PAR. 7. The use by respondent of these erroneous and misleading representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondent's product and the results which might be obtained through the use thereof, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of the product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, and 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, Eugene Clement d' Art, individually, and trading as Victory Coal Saver Mfg. Co., 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 "Victory Coal Saver," or any other product of substantially similar composition or possessing substantially similar properties, under whatever name sold, do forthwith cease and desist from:

1. Representing, directly or by implication, that said product will effect any saving in coal consumption or increase the heat supplied by coal.

2. Representing, directly or by implication, that said product will cause coal to burn more slowly, more evenly, or more thoroughly.

3. Representing, directly or by implication, that said product will reduce smoke or ash.

4. Representing, directly or by implication, that said product prevents the formation of soot or removes or aids in the removal of soot.

5. Representing, directly or by implication, that said product or any ingredient therein has been endorsed or approved by the United States Bureau of Mines.

6. Using the words "Coal Saver," or any other word or words of similar import, as a part of respondent's trade name, or to designate, describe, or refer to respondent's product.

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.

Complaint

IN THE MATTER OF

OTTO A. KOHL, CLARKE VAN METER AND MARVIN M.
COBB, TRADING AS CHICK BED COMPANY

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

Docket 5181. Complaint, June 17, 1944—Decision, Mar. 8, 1945

Where three individuals engaged in the interstate sale and distribution of a litter or floor covering for poultry and brooder houses designated as "Chick Bed"; through advertisements in newspapers and periodicals, circulars, leaflets and other advertising material —

Represented that their product constituted an effective preventive of poultry diseases; that use thereof in poultry and brooder houses would cause chicks or poultry to be healthy and free from disease; that said product was an effective germicide when used as directed, and would prevent the growth of disease germs; and that its use was a competent and effective treatment for coccidiosis, saved disease losses and increased egg production;

The facts being that, while said product was absorptive and tended to dry conditions in poultry houses, thereby aiding in the control of diseases, it was not a preventive thereof; and other aforesaid claims were similarly false and misleading;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and to induce said public, because of such belief, to purchase their said product:

Held, That said acts and practices, under the circumstances set forth, were all to the prejudice and injury 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.

Elliott, Shuttleworth & Ingersoll, of Cedar Rapids, Ia., for respondents.

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 Otto A. Kohl, an individual, Clarke Van Meter and Marvin M. Cobb, individuals and trustees, are copartners, trading as Chick Bed Company, hereinafter 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 its charges in that respect as follows:

PARAGRAPH 1. Otto A. Kohl, is an individual, Clarke Van Meter and Marvin M. Cobb, are individuals and are trustees, under trust agreement between Otto A. Kohl dated April 21, 1941. The said Otto A. Kohl, Clarke Van Meter, trustee, and Marvin M. Cobb, trustee, are copartners, trading as Chick Bed Company with their office and principal place of business located at 96 B Avenue, N. E., in the city of Cedar Rapids, State of Iowa.