

IN THE MATTER OF

EDWIN M. FREEMAN, WILLIAM A. FREEMAN AND MICHAEL
J. FREEMAN, TRADING AS FREEMAN & FREEMAN

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

Docket 4735. Complaint, Mar. 18, 1942—Decision, May 2, 1945

Where three individuals engaged in manufacture and interstate sale of an automobile polish or paste which was designated "Porcelainize" and which they sold through wholesale jobbers, distributors, garages, and filling stations, for sale to the ultimate consumer-purchaser only "by the job" in units packaged for use in treating only one car; through statements on labels on the product and in advertising circulars, catalogs and periodicals and other matter;

Represented that said product was not an automobile polish but, instead, had properties which structurally changed the finish of the automobile, imparting to it a hard, smooth finish comparable to that produced in the annealing of porcelain, and that use thereof would prevent oxidation of the finish under all conditions of weather, make it more resistant to scratching, preserve the color and finish, and restore the finish of old cars;

The facts being said "Porcelainize" was an automobile polish and contained no ingredients similar to those found in porcelain; it contained very fine abrasives, which made the surface smooth, and polished by removing a portion of the finish; it had no properties which could structurally change the finish of an automobile or impart to it a hard, smooth finish comparable to that produced in the annealing of porcelain; and use thereof would not prevent oxidation of the finish or harden the paint or finish so as to make it more resistant to scratching, nor preserve the color or finish of a car or restore the finish to old cars;

With the effect of misleading and deceiving prospective purchasers thereof into the mistaken belief that the said representations were true and of causing a substantial portion of them, because of such belief, to purchase a substantial quantity of 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 constitute unfair and deceptive acts and practices in commerce.

Before *Mr. J. Earl Cox*, trial examiner.

Mr. James M. Hammond and *Mr. D. E. Hoopingarner* for the Commission.

Honorable Lowell B. Mason, of Chicago, Ill., 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 Edwin M. Freeman, William A. Freeman and Michael J. Freeman, individually, and trading as Freeman & Freeman, hereinafter referred to as respondents, have 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. Respondents, Edwin M. Freeman, William A. Freeman and Michael J. Freeman, are individuals, trading under the name Freeman & Freeman, with their principal office and place of business at 696 South Broadway, Denver, Colo.

PAR. 2. Respondents are now, and for more than three years last past have been, engaged in manufacturing, selling and distributing an automobile polish or paste designated "Porcelainize" which is used in applying a finish on painted exterior surfaces of automobiles. Said automobile polish or paste is sold in units through wholesale jobbers, distributors, garages and filling stations and is used by garages and filling stations who sell the said units to the ultimate purchaser in the form of an applied polish or paste on the surface of an automobile. Said units are so packaged that they are for use in completing, treating or polishing the finish on only one car and said units are sold to the ultimate consumer "by the job" only.

Respondents cause and have caused their said product, when sold, to be transported from their aforesaid place of business in the State of Colorado to purchasers thereof located in various States of the United States other than the State of Colorado and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said automobile polish or paste in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business aforesaid, and for the purpose of inducing the purchase of their said product, respondents, through labels appearing on said product and through advertising circulars, catalogs and periodicals having a general circulation, and in other printed or written matter, all of which are distributed among prospective customers in the various States of the United States and in the District of Columbia, have made misleading statements and representations concerning their said product. Among such misleading statements and representations as to said product are the following:

Porcelainize

Trade Mark

PORCELAINIZE is NOT A POLISH, wax or coating. The finish is changed structurally. It prevents oxidation of the finish and makes it more resistant to scratching.

The care of the finish of an automobile after PORCELAINIZING is like the care of a bathtub; * *.

The care of a Porcelainized finish is as simple as the care of a porcelain dish.

Immune to water spotting.

Immune to road tar, tree sap, bug juice, road oil.

Makes paint finish more durable.

It does not hold gritty surface dirt.

Today's automobile paint finishes, fine as they are, are subject to deterioration and fading from the ultra-violet and infra-red rays of the sun. Heat and extreme weather conditions are contributing factors, too.

The Porcelainized process overcomes these difficulties by providing a hard and mirror-like paint surface * * *.

Chemically, and without heat, Porcelainize unites the structure of the paint so tightly that the ordinary lacquer finish of a car becomes a hard and mirror-like surface. PORCELAINIZE ELIMINATES THE PORES.

Porcelainize is a black, jelly-like substance which, astonishing as it may seem, actually changes the finish structurally.

OXIDATION AND DULLING OF THE FINISH IS PREVENTED.

Ultra-violet rays of the sun (the most destructive force to finish), heat, rain, snow, intense cold, rapid changes in temperature, fog, salt scum, and road oil are successfully combatted by Porcelainize.

Porcelainize removes none of the original finish and does not itself become a part of the finish. No Porcelainize is left on the car.

PORCELAINIZE PRESERVES COLOR AND FINISH FOR YEARS.

To restore the original finish of an old car.

An old car, the paint surface of which is still intact, even though faded, can be restored to new car appearance by Porcelainizing.

PAR. 4. Through the use of the statements and representations set forth in paragraph 3 hereof, and others similar thereto not specifically set out herein, respondents have represented that their automobile polish or paste designated "Porcelainize" is porcelain, and that its use produces a porcelain finish or a finish comparable to porcelain. Through the use of the trade name "Porcelainize," on their said product, respondents represents and imply that their said product is in fact porcelain or possesses the attributes of porcelain. Respondents, through the use of the statements, "It is not a wax, polish or coating," and "Porcelainize is a treatment which changes the paint finish structurally," accentuates the representations and implications created through the use of its trade name "Porcelainize." Through said statements respondents represent that the use of said product produces a car finish immune to water spotting, road tar, tree sap, bug juice, road oil and one that will not hold gritty surface dirt. Respondents represent that the use of said product will restore the original finish to old cars and will prevent oxidization of the finish under all conditions of weather. It also represents that the use of said product will not remove any of the original finish, and that it chemically unites the structure of the paint, thereby changing the finish of a car structurally.

PAR. 5. In truth and in fact, respondents' product "porcelainize" is an automobile polish or paste; it is not porcelain and it will not produce a porcelain finish, nor a finish comparable to porcelain. The finish produced by use of respondents' said product is not comparable to that produced in the annealing of porcelain. The use of said product will not make a car's finish immune to water spotting, road tar, tree sap, bug juice or road oil. A finish to which said product is applied will hold gritty surface dirt. Its use will not restore the original finish or color to an automobile unless the original color still exists underneath the surface layer and it will not prevent oxidization of finish. The ingredients in said product are such that it acts as a buffing or light grinding compound and it may grind off the paint or enamel surface so as to give the same a smooth, glassy or mirror-like finish, but there are no structural changes in the finish of a car to which it is applied. Said product does not chemically or otherwise unite the structure of the paint to which it is applied. There is no consistent differences in the nature or degree of weathering destruction to finishes to which Porcelainize is applied and those to which the same was not applied.

PAR. 6. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale and distribution of their said product have had, and now have, the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the aforesaid misleading and deceptive representations are true and cause a substantial portion of the purchasing pub-

lic, because of said mistaken and erroneous belief so engendered, to purchase a substantial quantity of respondents' said product, to their injury and to the injury of the public.

PAR. 7. The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and constitute unfair 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 18, 1942, issued, and subsequently served, its complaint in this proceeding upon the respondents, Edwin M. Freeman, William A. Freeman, and Michael J. Freeman, individually, and trading as Freeman & Freeman, 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 respondents' answer 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, testimony and other evidence, answer to the complaint, report of the trial examiner upon the evidence, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; 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. Respondents, Edwin M. Freeman, William A. Freeman, and Michael J. Freeman, are individuals, trading under the name Freeman & Freeman, with their principal office and place of business at 696 South Broadway, Denver, Colo.

PAR. 2. Respondents are now, and for several years last past have been, engaged in manufacturing, selling, and distributing an automobile polish or paste designated "Porcelainize." Said automobile polish or paste is sold in units through wholesale jobbers, distributors, garages, and filling stations and is used by garages and filling stations that sell the said units to the ultimate purchaser in the form of an applied polish or paste on the surface of an automobile. Said units are so packaged that they are for use in completing, treating, or polishing the finish on only one car, and said units are sold to the ultimate consumer "by the job" only.

Respondents cause and have caused their said product, when sold, to be transported from their aforesaid place of business in the State of Colorado to purchasers thereof located in various States of the United States other than the State of Colorado and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said automobile polish or paste in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business aforesaid, and for the purpose of inducing the purchase of their said product, respondents, through labels appearing on said product and through advertising circulars, catalogs, and periodicals having a general circulation, and in other printed or written matter, all of which are distributed among prospective customers in the various States of the United States and in the District of Columbia, have made misleading statements and representations concerning their said product. Among such misleading statements and representations as to said product are the following:

PORCELAINIZE is NOT A POLISH, wax or coating. The finish is changed structurally. It prevents oxidation of the finish and makes it more resistant to scratching.

The care of the finish of an automobile after PORCELAINIZING is like the care of a bathtub; * * *.

The care of a Porcelainized finish is as simple as the care of a porcelain dish.

Immune to water spotting.

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OXIDATION AND DULLING OF THE FINISH IS PREVENTED.

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PORCELAINIZE PRESERVES COLOR AND FINISH FOR YEARS.

To restore the original finish of an old car.

An old car, the paint surface of which is still intact, even though faded, can be restored to new car appearance by Porcelainizing.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents represent that said product is not an automobile polish but, instead, has properties which structurally change the finish of the automobile to which applied, imparting to it a hard, smooth finish comparable to that produced in the annealing of porcelain and that its use will prevent oxidation of the finish under all conditions of weather, make it more resistant to scratching, preserve the color and finish, and restore the finish of old cars.

PAR. 5. Respondents' product, Porcelainize, is an automobile polish and contains no ingredients similar to those found in porcelain. This product contains very fine abrasives, which have the effect of making the surface smooth and polished by removing a portion of the surface finish. Respondents' product has no properties which can structurally change the finish of an automobile to which applied or impart to it a hard, smooth finish comparable to that produced in the annealing of porcelain. The use of this product will not prevent oxidation of the finish or harden the paint or finish on the automobile so as to make it more resistant to scratching. The use of this product will not preserve the color or finish of a car or restore the finish to old cars.

PAR. 6. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale, and distribution of their said product have had, and now have, the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the aforesaid misleading and deceptive representations are true and cause a substantial portion of the purchasing public, because of said mistaken and erroneous belief so engendered, to purchase a substantial quantity of respondents' said product.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondents, testimony and other evidence in support of the complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Edwin M. Freeman, William A. Freeman, and Michael J. Freeman, individuals, trading under the name Freeman & Freeman, or under any other trade name, 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 "Porcelainize," 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:

1. Representing directly or indirectly that respondents' product will produce a hard, smooth finish comparable to that produced in the annealing of porcelain.

2. Representing directly or indirectly that respondents' product has properties which will structurally change the finish of an automobile, prevent oxidation, or harden the paint or finish so as to make it more resistant to scratching.

3. Representing directly or indirectly that the use of respondents' product will preserve the color or finish of an automobile or restore the finish to old automobiles.

4. Representing directly or indirectly that respondents' product is not a polish or that it has any property or value other than that of an abrasive polish.

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.

IN THE MATTER OF
THE JUNG ARCH BRACE COMPANY

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

Docket 4767. Complaint, May 28, 1942—Decision, May 2, 1945

Where a corporation engaged in the interstate sale and distribution of various devices and medicinal preparations for foot ailments; including its "Jung's Arch Braces," "Jung's Ankle and Foot Braces," etc.; through advertisements in newspapers, periodicals, circulars, pamphlets, letters and other advertising media—

- (a) Falsely represented that a feeling of discomfort or fatigue, tired, aching or strained sensations after use, dull aches in the calf of the leg, knee, hip or lumbar region, sensitiveness beneath the heel, loss of spring or inability to get comfortable shoes, cramps in toes, momentary sharp pains when stepping on uneven surfaces, aches or pains in the anterior or posterior metatarsal region, stiffness or sensitiveness upon arising in the morning or after sitting, a callosity beneath the metatarsal heads, bunions or hammertoes clearly indicate weak foot, splay foot or flat foot, and that its elastic braces constituted a competent treatment for all such symptoms and conditions; and that the use of its elastic braces had simplified and made easier the treatment of flat or splay foot;
- (b) Falsely represented that 90 percent of people do not have normal feet and that most people have undeveloped, relatively weak feet, notwithstanding the absence of any reliable statistics showing said facts, and represented falsely also that all foot troubles are caused by weakened muscles; that diagnosis of foot troubles by the use of the impression of the foot is not satisfactory or reliable; that rigid arch supports are always harmful; and that high arches are often more troublesome than lower ones and higher arched feet are generally weaker than flat feet;
- (c) Falsely represented that complicated and difficult examinations are never necessary in diagnosing foot ailments; that it could diagnose foot ailments and prescribe the right treatment without examination of the foot; that its diagnosis, advice, recommendations, or prescriptions were similar to those given by a doctor after a personal physical examination; that its advice and recommendations could be relied upon to stop foot pains, give complete relief, or permanently correct foot troubles; and that mental and body fatigue, backaches, pains in the hips, aching legs, nervousness, and the discomforts attributed to neuritis, sciatica, rheumatism, lumbago, and arthritis are frequently due to foot ailments;
- (d) Falsely represented that "Jung's Arch Braces" were more effective than the strapping process in the treatment of foot ailments; that they would lift metatarsal bones out of any incorrect position and thereafter hold them properly positioned; that the use of said braces would cure, or correct the cause of or prevent the recurrence of, pains in the feet, ankles, calf, knees, toes, instep, ball or heel of the foot, or prevent excess spreading of the feet; that said braces directly assisted the muscles to function properly and restore muscular activity; acted as an extra muscle; produced a massage action sufficient to stimulate the blood circulation and provided a fresh supply of energy; and that the use of said braces would give immediate relief to foot ailments generally, and that continued use would cure such ailments;
- (e) Falsely represented that "Jung's Ankle and Foot Braces" gave the ankle and foot more perfect bracing than all other devices or methods; that its stock-sized braces usually fitted the foot better than the highest grade, made-to-measure ankle brace;