

Syllabus

IN THE MATTER OF

FRIGID CHEMICAL CORPORATION AND
HOWARD Y. HODGE

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

Docket 5248. Complaint, Nov. 17, 1944—Decision, Oct. 2, 1945

Where a corporation and its president, who controlled it, engaged in the production and interstate sale and distribution of an anti-freeze solution for use in automobile radiators, designated as "Kant Freez", "Frigid", or "Frigid Anti-Freeze"—

- (a) Falsely represented through statements in letters, pamphlets, charts, labels, and other advertising material that they had a factory at Stroudsburg, Pa., a warehouse at Allentown, Pa., and a business office in New York, N. Y.; when in fact their entire business was carried on from a single room of moderate size in Stroudsburg, where they had containers and simple equipment sufficient for the mixing or compounding of not more than 50 gallons daily of their said anti-freeze solution;
- (b) Represented as aforesaid that their said anti-freeze solution was a safe and suitable product for use as anti-freeze protection for automobile radiators, which would not cause leaks, or attack, corrode, or rust any kind of metal, rubber or paint, or clog the passages in the cooling systems of automotive engines;

The facts being that their said product, as shown by analysis of the Bureau of Standards, was not, as contended, composed principally of an aqueous solution of calcium phosphate (tertiary), but contained 29.3 percent calcium chloride with small amounts of intended corrosion inhibitors added and, as such solution, had a highly injurious effect on the cooling and ignition systems of automobile engines, would cause serious corrosion of the water pump, radiator, and particularly any aluminum parts such as cylinder heads, and partial or complete stoppage of the water passages, especially in the radiator, with resultant overheating; had a tendency to "creep", whereby it might get into the engine cylinders and cause damage to many engine parts; might cause rapid erosion of the water pump impeller shaft and soon result in spraying the solution over the outside of the engine, where, being a good conductor of electricity, it might short-circuit the ignition system and necessitate replacement thereof; and

- (c) Misleadingly and deceptively failed to inform of the danger of such damaging effects, the general public, accustomed to believe that products generally known and designated as "anti-freeze" solutions and advertised and offered to the public as such, may be used with safety in the cooling system of an internal combustion engine and will not cause rust, corrosion, clogging, or other injury;

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

Held, That such 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.

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Before *Mr. John P. Bramhall*, trial examiner.
Mr. R. A. McOuat 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 Frigid Chemical Corporation and Howard Y. Hodge, 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. Respondent Frigid Chemical Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal place of business at 420 Main St. in the city of Stroudsburg, in the State of Pennsylvania. Respondent Howard Y. Hodge, an individual, is president of respondent Frigid Chemical Corporation, and formulates and controls its practices and policies; he has his office and place of business at the same address as the corporate respondent. Said respondents have acted together and in cooperation with each other in doing the acts and things hereinafter alleged.

PAR. 2. Respondent Frigid Chemical Corporation is now and for more than one year last past has been engaged in the production of a solution designed to prevent freezing in automobile radiators designed "Kant Freez," "Frigid," or "Frigid Anti Freez," and in the sale and distribution thereof in commerce among and between the various States of the United States and in the District of Columbia. Respondents cause said product, when prepared for marketing and sold, to be transported from the city of Stroudsburg in the State of Pennsylvania to purchasers thereof who are located at points in various other States of the United States, and in the District of Columbia. Respondents maintain, 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.

PAR. 3. In the course of their aforesaid business, and in furtherance of the sale and distribution of said product, respondents have circulated and are now circulating among prospective purchasers throughout the United States, by United States mails, advertisements by means of letters, pamphlets, and charts, and other advertising material, all of general circulation, many false and misleading statements relative to their business and to the efficacy of said

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product in preventing freezing in automobile radiators, among and typical of which are the following:

(Letterheads)

Permanent

Anti Freez

FRIGID

Chemical Corp.

* * * * *

Warehouse

Office

Factory

Allentown, Pa.

New York City

Stroudsburg, Pa.

(Pamphlets)

Permanent

Anti Freez

Permanent

Anti Freez

* * * * *

FRIGID "THAT'S ALL"

(GUARANTEE)

No. 1—Any Anti Freez that will not create a leak is the Anti Freez to buy—
A SURE GUARANTEE

No. 2—* * *—A positive protection for your engine, and will not form gases
either hot or cold.

* * *

No. 4—HAS NO EFFECT—and will not attack, corrode, rust, clog, or harm
any kind of metal, rubber, or paint surfaces under road and extensive
laboratory tests.

* * *

No. 7—KANT FREEZ—Will protect against freezing according to your mix-
ture (see chart)

No. 8—INDESTRUCTIBLE—Life of solution is probably indefinite. Heat or
cold will not destroy the elements.

(Charts)

PERMANENT

FRIGID

Anti Freez

* * *

RADIATOR

PROTECTION

CHART

(List of make and model of all automobiles in general use with directions for
use of respondents' product in each.)

PAR. 4. The aforesaid statements and representations, together with similar statements appearing in respondents' advertising but not herein set out, purport to be descriptive of respondents' business and of said product and its effectiveness in use in automotive engine radiators. In the manner and by the means aforesaid, respondents represent expressly and by implication that they have a factory at Stroudsburg, and a warehouse at Allentown, both in the State of Pennsylvania, and an office in New York, N. Y.; that said product "Frigid" furnishes permanent anti-freeze radiator protection for substantially all models of automobiles in general use in the United States; that "Anti Freez" will not create a leak; that it is positive

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protection against freezing and damage when used in an automobile engine; that it will not attack, corrode, rust, clog or harm any kind of metal, rubber, or paint surfaces; that the solution is indestructible.

PAR. 5. In truth and in fact, respondents do not have a factory at Stroudsburg, Pa. They maintain no warehouse at Allentown. They have no office in New York, N. Y. "Frigid" is not a permanent anti-freeze mixture. Said product is an aqueous solution of calcium chloride to which small amounts of intended corrosion inhibitors have been added. Said product's noncorrosive properties do not compare favorably with other quality anti-freeze solutions sold in the United States. These intended corrosion inhibitors as well as the calcium chloride have highly injurious effects upon the component parts of the cooling and ignition systems of automotive engines. Respondents' product causes serious corrosion of the water-pump, radiator, and cylinder heads, and is particularly deleterious to any aluminum parts. Respondents' said product causes partial or complete stoppage of water passages in the radiator, with resultant overheating. Respondents' said solution has a tendency to "creep" and to leak or seep into the engine cylinders and cause great damage to many engine parts other than the radiator. When the solution causes an erosion of the water-pump impeller shaft, the solution is sprayed over the outside of the automobile engine. "Frigid" is a good conductor of electricity and causes a short circuit of the ignition system. Because of the high corrosivity of respondents' solution, small deposits eaten from parts of the radiator may temporarily seal small radiator leaks.

Respondents operate their entire business in a single room in a building located at 420 Main St., Stroudsburg, Pa. Respondents mix the solution in said building where it is stored until sold and shipped to customers. The mixing equipment consists of two kettles in which the ingredients are mixed. Respondents place the words "Warehouse, Allentown, Pennsylvania," "Office, New York City" and "Factory, Stroudsburg, Pennsylvania" on letterheads and other printed matter to create the impression that they actually maintain a warehouse, an office and a factory at the respective locations.

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 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' representation that their said 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 said product as an "anti-freeze" is misleading and deceptive.

PAR. 7. Many purchasers of products associated with the operation of an automobile have a preference for those products which may be purchased direct from the factory, warehouse, or New York office of the manufacturer, in the belief that in so purchasing they may have the advantage of lower prices, better quality, and other advantages which would not be available if said purchases would have to be made through middlemen, wholesalers, retailers, or salesmen.

PAR. 8. The use by the respondents of the foregoing deceptive, false, and misleading statements and representations with respect to said solution has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and induces the purchase of respondents' said product because of said erroneous and mistaken belief.

PAR. 9. The aforesaid acts and practices of the respondents 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 17, 1944, issued and subsequently served its complaint in this proceeding upon the re-

spondents named in the caption hereof, 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 an 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 on the said complaint, answer, testimony and other evidence, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief 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. Respondent Frigid Chemical Corporation is a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 420 Main St., Stroudsburg, Pa. Respondent Howard Y. Hodge, an individual, is president of the corporate respondent and has his office and place of business at 420 Main St., Stroudsburg, Pa. The individual respondent owns all the stock of the corporate respondent except qualifying shares, and formulates and controls its policies and practices. The said respondents have acted together and in cooperation with each other in carrying on the business of producing, selling, and distributing an anti-freeze solution for use in automobile radiators and have designated said solution as "Kant Freez," "Frigid," or "Frigid Anti-Freez."

PAR. 2. In the course and conduct of the aforesaid business, respondents have caused their said anti-freeze solution, when sold, to be transported from their place of business in Pennsylvania, to purchasers thereof at their points of location in various other States of the United States and in the District of Columbia, and have maintained a course of trade in said product in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In order to promote and induce the sale and distribution of their said anti-freeze solution, respondents have circulated among prospective purchasers in various States of the United States, by means of the United States mails and by other means, letters, pam-

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Findings

phlets, charts, labels, and other advertising material. In this advertising material, respondents have made numerous false and misleading statements concerning their business and their said anti-freeze solution, among and typical of which are the following:

Permanent Anti-Freeze	FRIGID	CHEMICAL CORP.
Warehouse	Office	Factory
Allentown, Pa.	New York City	Stroudsburg, Pa.
* * *	* * *	* * *

FRIGID "THAT'S ALL"

GUARANTEE

No. 1—Any Anti Freez that will not create a leak is the Anti Freez to buy—
A SURE GUARANTEE

No. 2—NON INFLAMMABLE—A positive protection for your engine, and will
not form gases either hot or cold.

* * *

No. 4—HAS NO EFFECT—and will not attack, corrode, rust, clog, or harm
any kind of metal, rubber, or paint surfaces under road and extensive
laboratory tests.

* * *

No. 6—SUMMER AND WINTER—Can remain in radiator all year round with
protection. Boiling Point 230 F. degrees.

* * * * *

FRIGID CHEMICAL CORPORATION

Warehouse	Office	Factory
Allentown, Pa.	New York City	Stroudsburg, Pa.

PAR. 4. By means of the aforesaid statements, respondents have represented, directly and by implication, that they have a factory at Stroudsburg, Pa., a warehouse at Allentown, Pa., and a business office in New York, N. Y.; that their said anti-freeze solution is a safe and suitable product to be used as anti-freeze protection for automobile radiators; that it will not cause leaks; and that it will not attack, corrode, or rust any kind of metal, rubber, or paint, or clog the passages in the cooling systems of automotive engines. In truth and in fact, respondents do not have the large and extensive business facilities claimed. They maintain no warehouse at Allentown, Pa., and have no business office in New York, N. Y. The entire business of respondents is carried on from a single room of moderate size in Stroudsburg, Pa., where they have containers and simple equipment sufficient for the mixing or compounding of not more than 50 gallons daily of their said anti-freeze solution. The individual respondent testified that their aforesaid anti-freeze solution is composed principally of an aqueous solution of calcium phosphate (tertiary), with small quantities of acetone, dioxan, gum arabic, Aqualube, and methylene blue. However, analysis of respondents' said product by the National Bureau of Standards dis-

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closes that it is essentially a solution of calcium chloride, to which small amounts of intended corrosion inhibitors have been added. The analysis showed no trace of phosphates, but did show that the product contained 29.3 percent calcium chloride. Such a solution has a highly injurious effect on the component parts of the cooling and ignition systems of automobile engines. It will cause serious corrosion of the water pump, radiator, and particularly any aluminum parts such as cylinder heads. It will cause partial or complete stoppage of the water passages, especially in the radiator, with resultant overheating. It has a tendency to "creep" and may thus get into the engine cylinders and cause damage to many engine parts. Such a solution may cause rapid erosion of the water pump impeller shaft and soon result in spraying the solution over the outside of the engine, where, because it is a good conductor of electricity, it may short-circuit the ignition system and necessitate the replacement thereof.

PAR. 5. For many years there have been on the market various solutions which are sold to the general public for use in the cooling systems of internal combustion engines to prevent damage from the freezing of water used in the cooling systems, which solutions cause no injury to the engine in which they are used. These solutions are generally known and designated as "anti-freeze" solutions, and when a product is advertised and offered to the public as an "anti-freeze," members of the public believe that it may be used with safety in the cooling system of an internal combustion engine and that it will not cause rust, corrosion, clogging, or other injury. Respondents' representation of their aforesaid product as an anti-freeze, without informing members of the public of the damaging effects which may result from its use, is misleading and deceptive.

PAR. 6. The use by respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their business, and with respect to their so-called "anti-freeze" product, has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true and to induce the purchase of respondents' said product because of such erroneous and mistaken beliefs.

CONCLUSION

The aforesaid acts and practices of respondents 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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondents, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and brief in support of the complaint (respondent not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Frigid Chemical Corporation, a corporation, its officers, and respondent, Howard Y. Hodge, individually and as an officer of the corporate respondent, jointly or severally, their respective 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 the anti-freeze preparation designated "Kant Freez," "Frigid," or "Frigid Anti-Freez," or any anti-freeze solution of substantially similar composition or having substantially similar properties, do forthwith cease and desist from:

1. Representing that any office or warehouse is owned, maintained, or operated in any city or locality where no such office or warehouse is owned, maintained, or operated; or otherwise representing in any manner that the size, nature, or extent of the facilities owned, occupied, or operated is different from or greater than is the fact.

2. Representing that their said anti-freeze product is safe for use in the cooling systems of internal combustion engines; that it will not cause leaks; or that it will not rust, corrode, clog, or otherwise damage the cooling systems or other parts of such engines.

3. Representing that their said product is an anti-freeze preparation for use in the cooling systems of internal combustion engines without affirmatively disclosing in a clear and conspicuous manner in immediate conjunction with such representation the fact that said preparation will rust and corrode the cooling system of such an engine, may clog the passages in such cooling system, and otherwise damage such engine.

It is further ordered, That respondents shall, within 60 days after the 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
STROMBERG HATCHERY

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

Docket 5162. Complaint, May 20, 1944—Decision, Oct. 3, 1945

A United States Record of Performance breeder is understood by the poultry industry to be one operating a poultry breeding plant or hatchery in accordance with the provisions of the United States Record of Performance breeding stage, under the National Poultry Improvement Plan administered by the United States Department of Agriculture through the Bureau of Animal Industry, and under which, in addition to maintaining United States Record of Performance matings, all other mated birds supplying hatching eggs to said person or to any hatchery owned or operated by him must be under the supervision of the plan in one of the breeding stages.

Where four individuals engaged in the hatching, breeding, and interstate sale and distribution of chickens and baby chicks; through advertising in newspapers, folders, pamphlets, circulars, and other advertising matter—

- (a) Falsely represented, directly or by implication, that they were United States Record of Performance poultry breeders, and that they operated a poultry hatchery under the supervision and in accordance with the rules and regulations of the National Poultry Improvement Plan administered by the Bureau of Animal Industry of the Department of Agriculture;
- (b) Falsely represented that United States Record of Performance males headed their best flocks; that their "extra special grade" chickens and baby chicks were produced from Record of Performance males; and that their White Leghorn and White Rock chickens and baby chicks were sired by Record of Performance males;

When in fact their flocks were not headed or their baby chicks sired by males that had been approved, leg-banded, and registered by official Record of Performance inspectors and did not otherwise comply with the requirements for United States Record of Performance males in accordance with the National Poultry Improvement Plan, under the rules and regulations of which, chicks and hatching eggs, although produced in hatcheries complying with the plan, lose their identity when purchased for resale by a person or firm not participating therein; and

- (c) Falsely represented that all their flock inspection work was done by authorized licensed inspectors and testers; and that their baby chicks were double blood tested for pullorum and fowl typhoid;

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

Held, That such 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.