

Complaint

IN THE MATTER OF
MARVEL EQUIPMENT MANUFACTURERS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5372. Complaint, Aug. 28, 1945—Decision, Jan. 22, 1946*

Where a corporation engaged in interstate sale and distribution of machinery and industrial equipment, including railway switch heaters intended to keep switches free from snow and ice; through statements in letters, circulars, folders, and other advertising literature, directly and by implication—

- (a) Falsely represented that it had an engineering department and engineers in its employ to supervise the installation of its switch heaters;
- (b) Falsely represented that its switch heaters had been installed for use on their switches by the Pennsylvania Railroad Company, New York Central Railroad Company, New York, New Haven & Hartford Railway Company, and the Long Island Railroad Company;
- (c) Falsely represented that the heaters installed on the railroad switches shown in the pictures displayed by it in its aforesaid matter were its switch heaters, when in fact they were competitive products; and
- (d) Made use of the name "Manufacturers" in its corporate name and thereby, and through use of the words "Interior View of Factory" and its name and address following a picture of a factory interior, and depictions in other advertising of factory buildings shown under the heading "Manufacturing Home of Marvel Products," represented that it owned, operated, or controlled a plant or factory wherein the products offered for sale by it were made;

When in fact it did not own, operate or control any such plant; all the products sold and offered for sale by it were manufactured in plants owned, operated, and controlled by others; and it was not a manufacturer, with which a substantial portion of the purchasers of the products herein involved prefers to deal, rather than with distributors;

With tendency and capacity to mislead and deceive a substantial portion of such purchasers into the purchase of substantial quantities of its products:

Held, That such 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.

Mr. Joseph C. Callaway for the Commission.

Alster, Berger & Wald, of Chicago, Ill., 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 Marvel Equipment Manufacturers, Inc., a corporation, 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

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

PARAGRAPH 1. Respondent, Marvel Equipment Manufacturers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 224 South Michigan Avenue, Chicago, Ill.

PAR. 2. Respondent is now and for more than one year last past has been engaged in the sale and distribution of machinery and industrial equipment, including railway switch heaters, intended to keep switches free from snow and ice.

In the course and conduct of its business respondent causes such products, when sold, to be transported from Freeport, Ill., and other places of manufacture 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 various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its switch heaters respondent has made and is now making certain false, deceptive, and misleading statements and representations regarding its employees, its customers, and installations of its switch heaters, by means of letters, circulars, folders, and other advertising literature distributed generally to users of such equipment. Typical representations are as follows:

Our engineers will be happy to work with you on any layout in which you may be interested.

Your engineer is invited to inspect installations on * * * Penna. R. R. Co., N. Y. C. R. R. Co., N. Y. N. H. & H. Ry. Co., Long Island R. R. Co., * * *

MARVEL

RAILWAY SWITCH HEATERS

BURNING

COMMERCIAL GAS-FUEL OIL-BOTTLED GAS

(Here follows picture of railroad tracks and switch equipped with heaters)

MARVEL COMMERCIAL GAS HEATERS

(Here is shown another picture of railroad tracks and switch with heaters installed)

HEATER INSTALLED

PAR. 4. Through the use of the statements and representations above set forth and others similar thereto not specifically set out herein,

respondent has represented and is now representing, directly and by implication, that it has an engineering department and engineers in its employ to supervise the installation of its switch heaters; that its switch heaters have been installed for use on their switches by the Pennsylvania Railroad Co., New York Central Railroad Co., New York, New Haven & Hartford Railroad Co., and the Long Island Railroad Co.; and that the heaters installed on the railroad switches shown in the pictures mentioned above are respondent's switch heaters.

PAR. 5. The foregoing representations are false, deceptive and misleading. Respondent has never had an engineering department, or had engineers in its employ to supervise the installation of its switch heaters, or for any other purpose. Respondent's switch heaters have never been installed for use on any of the switches of the railroads named herein. The switch heaters shown installed in the pictures mentioned above are not respondent's switch heaters, but are competitive products.

PAR. 6. In addition to the representations set forth in paragraph four, respondent has made and is making false and misleading representations as to its business status. In some of respondent's advertising the words "Interior View of Factory" and respondent's name and address follow a picture of a factory interior. In other advertising factory buildings are shown under the heading "Manufacturing Home of Marvel Products." By the use of these pictures and the words in connection therewith, and by use of the word "manufacturers" in its corporate name, respondent represents that it owns, operates or directly and absolutely controls a plant or plants wherein are made or manufactured products offered for sale by it. In truth and in fact respondent neither own, operates, nor directly and absolutely controls any such plant. All the products sold and offered for sale by it are manufactured in plants owned, operated and controlled by others.

PAR. 7. There is a preference on the part of a substantial portion of the purchasers of machinery and industrial equipment for dealing directly with the manufacturers of such products, rather than with distributors.

PAR. 8. The use by the respondent of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, in connection with the sale and distribution in commerce of its machinery and industrial equipment has had and now has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasers and prospective purchasers of such products into the erroneous and mistaken belief that such statements and repre-

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sentations are true and into the purchase of substantial quantities of the products offered for sale in commerce by the respondent.

PAR. 9. 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 August 28, 1945, issued and thereafter served its complaint in this proceeding upon the respondent, Marvel Equipment Manufacturers, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondent and counsel for the respondent and Richard P. Whiteley, assistant chief counsel for the Federal Trade Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding in lieu of testimony in support of, or in opposition to, the charges stated in the complaint and that the Commission might proceed upon said complaint and statement of facts to make its report, stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon, and enter its order disposing of the proceeding without any intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved, accepted, and filed by the Commission; and the Commission, having duly considered the matter and now being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Marvel Equipment Manufacturers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 224 South Michigan Avenue, Chicago, Ill.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of machinery and industrial equipment, including railway switch heaters, intended to keep switches free from snow and ice.

In the course and conduct of its business, respondent, within the past year, has caused such products, when sold, to be transported from Freeport, Ill., and other places of manufacture 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 various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its switch heaters, respondent has made certain false, deceptive, and misleading statements and representations regarding its employees, its customers, and installations of its switch heaters, by means of letters, circulars, folders, and other advertising literature distributed generally to users of such equipment. Typical representations are as follows:

Our engineers will be happy to work with you on any lay-out in which you may be interested.

Your engineer is invited to inspect installations on * * * Penna. R. R. Co., N. Y. C. R. R. Co., N. Y. N. H. & H. Ry. Co., Long Island R. R. Co., * * * .

MARVEL
RAILWAY SWITCH HEATERS
BURNING
COMMERCIAL GAS-FUEL OIL-BOTTLED GAS

(Here follows picture of railroad tracks and switch equipped with heaters.)

MARVEL
COMMERCIAL GAS HEATERS

(Here is shown another picture of railroad tracks and switch with heaters installed.)

HEATER INSTALLED

PAR. 4. Through the use of the statements and representations above set forth respondent has represented, directly and by implication, that it has an engineering department and engineers in its employ to supervise the installation of its switch heaters; that its switch heaters have been installed for use on their switches by the Pennsylvania Railroad Co., New York Central Railroad Co., New York, New Haven & Hartford Railroad Co., and the Long Island Railroad Co.; and that the heaters installed on the railroad switches shown in the pictures mentioned above are respondent's switch heaters.

PAR. 5. Respondent has never had an engineering department, or had engineers in its employ to supervise the installation of its switch heaters, or for any other purpose. Respondent's switch heaters have

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never been installed for use on any of the switches of the railroads named herein. The switch heaters shown installed in the pictures mentioned above are not respondent's switch heaters but are competitive products.

PAR. 6. In addition to the representations hereinabove set forth, respondent has made, and is making, certain false and misleading representations as to its business status. Respondent used the word "Manufacturers" in its corporate name. In some of respondent's advertising, the words "Interior View of Factory" and respondent's name and address follow a picture of a factory interior. In other advertising, factory buildings are shown under the heading "Manufacturing Home of Marvel Products." By means of such pictures and representations that they are views of respondent's factory and also by the use of the term "Manufacturers" in its corporate name, respondent represents that it owns, operates, or controls a plant or factory wherein the products offered for sale by it are made. In truth and in fact, respondent neither owns, operates, nor directly and absolutely controls any such plant. All the products sold and offered for sale by it are manufactured in plants owned, operated, and controlled by others.

PAR. 7. There is a preference on the part of a substantial portion of the purchasers of machinery and industrial equipment for dealing directly with the manufacturers of such products, rather than with distributors.

PAR. 8. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, in connection with the sale and distribution in commerce of its machinery and industrial equipment, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasers and prospective purchasers of such products into the purchase of substantial quantities of respondent's products.

CONCLUSION

The acts and practices of the respondent, 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 and a stipulation as to the

facts entered into between the respondent and Richard P. Whitely, assistant chief counsel for the Commission, which stipulation provides, among other things, that without further evidence or other intervening procedure, the Commission may enter its order disposing of the proceeding; and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That Marvel Equipment Manufacturers, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution in commerce as "commerce" is defined in the Federal Trade Commission Act, of machinery and industrial equipment, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent has an engineering department or engineers in its employ to supervise the installation of its products.

2. Representing, directly or by implication, that respondent's products have been installed for use on any railroad where respondent's products have not in fact been installed.

3. Using the word "manufacturers" or any other word of similar import or meaning in respondent's corporate or trade name or representing in any other manner that respondent owns, operates, or controls a factory wherein respondent's products are made.

4. Representing that any photograph or picture is a reproduction of respondent's factory when in fact respondent does not own, operate or control any factory wherein its products are made.

5. Representing that any photograph or picture is a reproduction of an installation of respondent's equipment when in fact the equipment reproduced is not equipment supplied or installed by the respondent.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

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IN THE MATTER OF

JOHN HANLEY

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

Docket 4714. Complaint, Feb. 24, 1942—Decision, Feb. 20, 1946

Where an individual engaged in interstate sale and distribution of a mechanical device for use on automobile motors, formerly designated "Whirlgas Supercharger" and later "Whirlgas Turbinator"; through cards and circulars distributed to prospective purchasers and through advertisements in newspapers and periodicals, directly or by implication—

- (a) Falsely represented that his device acted as and performed the functions of a supercharger—which increases the pressure at which the explosive charge is supplied to engine cylinders—when, in fact, it tended to obstruct or restrict the intake at a point just beyond the carburetor, with directly the opposite effect to that produced by a supercharger; and
- (b) Falsely represented that the device increased the normal speed and flow of gas vapor entering the combustion chamber and increased the explosive power thereof; that its use resulted in a substantial saving in fuel and increase in power, reduced the carbon monoxide content of the exhaust, eliminated carbon formation, and caused the motor to operate at an even temperature, thus preventing vaporlock with resulting oil economy;

When in fact the only savings accomplished were in those cases in which, in response to said individual's directions, too rich a fuel mixture was made leaner, and in which the ensuing saving was due to the adjusting of the carburetor rather than to the device in question, and was equally obtainable without it; and whereby also carbon monoxide content of the exhaust was correspondingly decreased;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby cause its purchase of substantial quantities of said device:

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. John W. Addison* and *Mr. J. Earl Cox*, trial examiners.
Mr. Merle P. Lyon and *Mr. Clark Nichols* for the Commission.

Mr. K. Hanley, of Prospect, Ohio, and *Donithen & Michel*, of Marion, Ohio, 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 John Hanley, an individual, hereinafter referred to as respondent, has violated the provisions of