

IN THE MATTER OF
WATTS-WAGNER CO., INC., ALLEN P. WAGNER AND
WILLIAM W. WAGNER

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

Docket 5005. Complaint, July 15, 1943—Decision, June 27, 1947

The word "weld," when used in relation to metals, is generally defined as a localized union or consolidation of metals, and is so understood in metal industries and by the public.

A weld is usually employed to make a joint that is expected to have strength and transmit stress, and can be made by a number of processes. Thus in some instances metals may be heated to temperatures below their fusion temperatures and consolidation brought about by pressure; in others metals may be heated to or above fusion temperature, followed by the application of pressure; and in still others metals may be fused at the surfaces to be joined by the application of heat with or without the application of fused metal from a filler rod but without the application of pressure.

Where a corporation and two individuals, who were officers thereof, engaged in the interstate sale and distribution to automotive jobbers and dealers who resold largely to garages and other auto repair shops and the consuming public, of their "Perma-Weld" liquid compound for use in repairing cracks in cylinder heads, water jackets, and various parts of automotive engines and other machinery, which set or hardened upon exposure to air and mild heat, and was intended to fill or plug cracks or small holes in articles of metal; through use of said designation, and through advertisements in periodicals, circulars, and other advertising materials—

- (a) Falsely represented, directly or by implication, that their said product, when used as directed, would cause a union, consolidation, or fusion of the cracked or damaged parts of engines and other machinery, such as would be accomplished by a welding process; and,
- (b) Represented further, falsely, that repairs made by use thereof were such as would result from use of a welding or fusing process, and, through use of the prefix "Perma-" as a part of their said designation, that such repairs would be lasting and constituted a permanent weld;

The facts being that their said product would not accomplish a weld, it did not, as made clear by testimony of an expert witness from the Bureau of Standards, fasten broken pieces of metal together in a substantial way which would withstand any material stress or vibration; process involved in use thereof differed from the so-called "cold welding process"—to which they called attention—in which use of such a sealer constitutes an incidental part and in which cracked parts are held together by bolts: and there was, therefore, no proper basis for representation of permanency;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true:

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Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

In a proceeding in which it was alleged that respondents misleadingly applied the designation "Perma-Weld" to a liquid sealing compound offered and sold for use in repairing cracks in cylinder heads, water jackets and various parts of automotive engines and other machinery, and thereby and otherwise falsely represented, directly and by implication, that their said product would cause a union, consolidation or fusion of the cracked or damaged parts such as would be accomplished by a welding process, the Commission made no finding as to the term "cold welding," as described in a pamphlet issued by the Office of Defense Transportation, nor as to its meaning to the general public, since respondents did not use that term in describing their product, as shown by the record, which further disclosed that use of such a product or sealer as respondent's, constituted an incidental part of the so-called "cold welding" process, under which cracked parts are held together by bolts and not by sealer product only.

As respects the form of corrective action in a proceeding in which the word "weld" was used as part of the designation of a liquid sealer compound which did not accomplish, as thereby represented and implied, a localized union or consolidation of metals resulting in permanent and lasting repairs, expected to have strength and transmit stress, the Commission was of the opinion that said word could not be properly qualified, because any attempt so to do would merely result in contradicting the ordinary meaning thereof.

Before *Mr. John L. Hornor* and *Mr. Randolph Preston*, trial examiners.

Mr. John M. Russell for the Commission.

Mr. Irving Davis, *Mr. Samuel Hassen* and *Mr. Irving Seidman*, of New York City, 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 Watts-Wagner Co., Inc., a corporation, Allen P. Wagner and William W. Wagner, individually and as officers of Watts-Wagner Co., Inc., a corporation, 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. Respondent, Watts-Wagner Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents, Allen P. Wagner and William W. Wagner, are president and secretary respectively of the corporate respondent and formulate, control, and direct its

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policies, acts and practices. Respondent's office and principal place of business is at 109-123 West Sixty-fourth Street in the city of New York in said State.

PAR. 2. Respondents, Watts-Wagner Co., Inc. and Allen P. Wagner and William W. Wagner, individually and as officers of said corporate respondent are now and have been for more than 2 years last past engaged in the business of selling and distributing a certain compound designated by them "Perma-Weld" for use in repairing water jackets, cylinders, or other metal parts of machinery. Respondents caused said product when sold by them to be transported from their aforesaid place of business in the State of New York to purchasers thereof at their various points of location in 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 and conduct of their aforesaid business and for the purpose of inducing the purchase of their said product respondents have circulated and are now circulating among prospective purchasers throughout the United States, by United States mail, advertisements in newspapers having general circulation, and by means of catalogues and circulars and other advertising materials which are distributed among prospective customers false and misleading statements and representations concerning their said product, "Perma-Weld." Among and typical of such false and misleading statements are the following:

PERMA-WELD

REPAIRS BOTH

ALUMINUM & CAST IRON

Cylinder Heads
Water Jackets
Cracked Valve Ports
Inner Cylinder
Cracks, etc.
Weld that Crack the Perma-Weld Way
Repairs Permanently
Welds as it Flows
It welds Aluminum, Cast Iron,
Cylinder Heads, Leaks in Corner of
Radiator, Radiator Core Leaks Due
to Vibrations * * *

PAR. 4. The word "weld" is generally understood in the metal industry and by the purchasing public, to mean localized union or consolida-

tion of metals and usually is employed to make a joint that is expected to have strength and withstand stress. Welds are made by a number of processes. Some metals may be heated to temperatures below the fusion temperatures and the consolidation may be brought about by pressure. Welds may also be made by heating to or above the fusion temperature plus the application of pressure, or by simple heat fusion of the metals at surfaces to be joined with or without the addition of fused metal from a filler rod, but without the application of pressure.

PAR. 5. Through the use of the name "Perma-Weld" for their product and through the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents have represented directly or by implication that their produce when used on cracked or damaged blocks, cylinders and valve parts or other parts of engines will cause a union, consolidation or fusion of the cracked or damaged parts of the said metal objects such as would be accomplished by a welding process and that repairs made by the use of their product are permanent, strong and lasting such as would result from the use of the welding or fusing processes above described.

Respondents have, through the use of the statements aforesaid, represented that repairs made through the use of their product "Perma-Weld" are permanent and lasting.

PAR. 6. The foregoing claims, statements, and representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' product does not produce a weld as that term is understood in the metal industry and by the purchasing public, and its use with metal objects will not effect a state or condition of being or becoming welded, nor cause the union consolidation or fusion of metals or metal parts of engines such as would be accomplished by a welding process, nor would repairs made by the use of respondents' product be permanent or lasting. Repairs made with said product will not be permanent or last the life of the repaired article or be equal to repairs made by the welding processes.

PAR. 7. The use by the respondents of the foregoing false and misleading statements and representations as aforesaid, has a tendency and capacity 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 thus induces the public to purchase substantial quantities of respondents' product as a result of such belief.

PAR. 8. The aforesaid acts and practices as herein alleged are all to the injury and prejudice of the public and constitute unfair and de-

ceptive acts and practices in commerce within the 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 July 15, 1943, issued and subsequently served its complaint in this proceeding upon respondents 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 were introduced before trial examiners 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 examiners, and briefs of counsel (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. (a) Respondent, Watts-Wagner Co., Inc., is a corporation organized and existing under the laws of the State of New York, with its principal office and place of business located at 109 West Sixty-fourth Street, New York, N. Y. It is engaged in the sale and distribution of automotive chemicals.

(b) Respondent, Allan P. Wagner (the individual referred to in the complaint as Allen P. Wagner), is president of the corporate respondent and his address is the same as that of the corporate respondent.

(c) Respondent, William W. Wagner, an individual, is a nephew of respondent, Allan P. Wagner, and is vice president and secretary of the corporate respondent, and his address is the same as that of the corporate respondent. The individual respondents are engaged in conducting and managing the business of the corporate respondent and in the sale and distribution of automotive chemicals.

PAR. 2. As a part of their business, respondents have, for several years last past, been engaged in the sale and distribution of a compound designated by them as "Perma-Weld" for use in repairing

cracks in cylinder heads, water jackets, and various parts of automotive engines and other machinery. Respondents cause said product, when sold by them, to be transported from their aforesaid place of business in the State of New York to the purchasers thereof at their various points of location in other States of the United States, and maintain, and have maintained, a course of trade in said product in commerce between and among various States of the United States.

PAR. 3. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their product designated "Perma-Weld," respondents have circulated among prospective purchasers in many States of the United States, by means of advertisements in magazines and by the distribution of circulars and other advertising materials, statements and representations concerning their said product, among and typical of which are the following:

PERMA - WELD

Repairs Both

Aluminum & Cast Iron

- Cylinder Heads
- Water Jackets
- Cracked Valve Ports
- Inner Cylinder
- Cracks, etc.

* * * * *

Does the Complete Job in 60 Minutes or Less

* * * * *

Weld that Crack the Perma-Weld Way

* * * * *

Repairs Permanently

* * * * *

Welds As It Flows

* * * * *

It Welds Aluminum, Cast Iron, Cylinder Heads, Leaks in Corner of Radiator, Radiator Core Leaks Due to Vibrations, Leaks, External Cracks in Blocks; Internal Cracks Around Valve Ports, and Combustion Chambers, Boilers, and Industrial Equipment.

PAR. 4. When used in relation to metals, the word "weld" is generally defined as a localized union or consolidation of metals and is so understood in metal industries and by the public. A weld is usually employed to make a joint that is expected to have strength and transmit stress, and can be made by a number of processes. In some instances metals may be heated to temperatures below their fusion temperatures and consolidation brought about by pressure; in some instances metals may be heated to or above fusion temperature, followed by the applica-

tion of pressure; and in other instances metals may be fused at the surfaces to be joined by the application of heat with or without the application of fused metal from a filler rod but without the application of pressure.

PAR. 5. Through the use of the name "Perma-Weld" as a designation for their said product and through the statements and representations set out above, and others similar thereto, respondents have represented, directly and by implication, that their product, when used as directed, will cause a union, consolidation, or fusion of the cracked or damaged parts of engines and other machinery such as would be accomplished by a welding process; and, further, that repairs made by the use of respondents' said product are such as would result from the use of a welding or fusing process, and that such repairs are permanent and lasting.

PAR. 6. Respondents' product is a liquid which sets or hardens upon exposure to air and mild heat, and is intended to fill or plug cracks or small holes in articles of metal. The method of use in repairing a cracked cylinder head of an automobile motor is described by one of the respondents as follows:

I warm the motor up first, disconnect the top leader hose, pour the contents of the can of Perma-Weld into the upper cylinder—the head, rather; then reconnect the top of the hose and let the motor run while the car is standing still. Sometimes we put a blanket over it to heat it up faster and the crack of the cylinder head will just gradually fill up with this material and become so hard that it is practically impossible to chisel it (Tr. p. 42).

PAR. 7. Respondents sell their product "Perma-Weld" to automotive jobbers and dealers, who resell largely to garages and other shops engaged in repair of motor vehicles, and in part to members of the consuming public. When used by a garage in making repairs, it becomes a part of a completed repair job sold as such to members of the public. Respondents introduced in evidence a pamphlet issued by the Office of Defense Transportation entitled "Cold Welding." This pamphlet describes a process of repairing cracked motor blocks and other parts of internal combustion engines by drilling holes in the damaged parts and fastening these parts together by threaded bolts and thereafter sealing any remaining crevices with a compound such as that sold by respondents. Respondents also introduced evidence indicating that in the automotive trade the term "cold welding" is understood as comprehending the use of sealing compounds such as respondents' "Perma-Weld" for the repair of cracked parts of internal combustion engines. Without making any finding as to the term "cold welding," or its meaning to the general public, the record shows that

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respondents do not use that term in describing their product. It further appears from the record that a product such as respondents' constitutes an incidental part of the so-called cold welding process in that under the process described cracked parts are held together by bolts and not by a product such as respondents' which is merely a sealer. Two of respondents' witnesses engaged in the automotive trade testified that respondents' product does not accomplish a weld, but is simply a sealer.

PAR. 8. The use of the prefix "Perma" as a part of the designation of respondents' product clearly conveys a representation that said product accomplishes a permanent weld. The testimony of an expert witness from the Bureau of Standards of the Department of Commerce makes it clear that in addition to not constituting a weld, respondents' product does not fasten broken pieces of metal together in a substantial way which will withstand any material stress or vibration, and there is therefore no proper basis for a representation of permanency.

PAR. 9. The Commission concludes, and therefore finds, that the designation "Perma-Weld" used by respondents, and the representations made concerning said product, as heretofore found, are false and misleading and have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true.

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 meaning of the Federal Trade Commission Act. In considering the form of corrective action in this matter, the Commission is of the opinion that the word "weld" as used by respondents in connection with repairs to metal parts cannot be properly qualified because any attempt to qualify it merely results in contradicting the ordinary meaning of the word "weld."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and other evidence taken before examiners of the Commission theretofore duly designated by it, report of the trial examiners, and the briefs of counsel (oral argument not having been requested), 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 respondent, Watts-Wagner Co., Inc., a corporation, its officers, representatives, agents, and employes, and the individual respondents, Allan P. Wagner and William W. Wagner, individually and as officers of the corporate respondent, jointly or severally, their respective representatives, agents, and employes, 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, or the product designated "Perma-Weld," or any other product of substantially similar composition or properties, whether sold under the same or any other name, do forthwith cease and desist from:

1. Using the words "weld" or "welding," or any other words of similar import or meaning, to designate, describe, or refer to said product or the results accomplished through the use of said product.

2. Representing, directly or by implication, that the use of said product will result in the fusion, union, consolidation, or welding of metal parts, or that the results accomplished through the use of said product are such as are accomplished through a welding process.

3. Representing, directly or by implication, that the use of said product will permanently repair any metal parts which are subjected to stress or vibration.

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.