

Syllabus

IN THE MATTER OF

AMMIEL F. DECKER AND MABLE P. DECKER TRADING
AND DOING BUSINESS AS DECKER PRODUCTS COM-
PANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5097. Complaint, Dec. 11, 1943—Decision, July 3, 1947

The term "back pressure" as applied to an automobile engine means the resistance offered to the flow of the exhaust gases as they pass through the muffler and exhaust pipe, and a part of the power produced by the engine must be used to overcome said resistance, i. e., to expel such gases.

Where two individuals engaged in the interstate sale and distribution of a mechanical device which was designated by them as "Vacudex" and designed to be attached to the end of the exhaust pipe or tail pipe of automobiles and trucks, and which was based upon the theory that, by eliminating or reducing back pressure, said device released for the primary purpose of propelling the automobile the engine power otherwise used to overcome back pressure resistance; through advertisements, by radio broadcasts, and newspapers, magazines, circulars and other advertising material—

Represented, directly or by implication, that their device saved gasoline and oil; increased the power of the motor and caused it to give better performance; drew carbon, oil, and moisture from the muffler and eliminated back pressure; reduced the vibration of the motor; gave the motor greater acceleration and caused it to run more smoothly and more quietly; and saved tires;

The facts being, as established by the evidence including results of tests by the National Bureau of Standards and the testimony of the Bureau expert on automotive engines, that their said device would not eliminate or reduce back pressure, and was incapable of accomplishing the results claimed for it as above set forth;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the results which might be accomplished through use of said device, 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.

In a proceeding in which there was at issue the correctness of respondent sellers' theory that their device, for attachment to the end of the exhaust pipe or tail pipe of automobiles and trucks, would eliminate or reduce back pressure, and thus release a part of the engine's power, otherwise expended for said purpose, for the primary purpose of propelling the automobile and thereby result in the benefits claimed therefor by them, including a saving in gasoline or oil, an increase in the power of the motor, better motor performance,

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and a number of others; and in which it appeared that road tests by the Bureau of Standards first showed that the device did not reduce back pressure; that, thereafter, certain laboratory tests in regard to back pressure made by the Bureau, in which the device was not used, showed that in order to bring about the result claimed, the reduction in back pressure would have to be so great that, even after making full allowance for the possibility of experimental error in the road tests, it was evident that the device in question could have no appreciable effect upon back pressure; and that subsequent laboratory tests, made by the Bureau using said device with a Ford V-8 engine equipped with suitable instruments for making necessary measurements and in which engine speeds and loads were those computed as equivalent to road operation at 20, 30, 40, and 50 miles per hour, showed no measureable change in exhaust pressure when the device was removed and that it had no measureable effect on fuel consumption, power, or engine performance: The Commission was of the opinion, after giving careful consideration to the reports of tests introduced by said respondent sellers and the testimony of witnesses in connection therewith, and found, that such testimony and other evidence did not overcome the greater weight of the testimony and other evidence introduced in support of the complaint.

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. Joseph Callaway for the Commission.

Mr. Paul A. Blair, *Mr. J. C. Trimble* and *Mr. Harry S. Hall*, of Washington, D. C., 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 Ammiel F. Decker and Mable P. Decker, individuals trading and doing business as Decker Products Co., 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. Respondents Ammiel F. Decker and Mable P. Decker are individuals trading and doing business under the name of Decker Products Co., with their principal place of business located at 106 Fifth Avenue, Pelham, N. Y.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of an exhaust muffler attachment, designated as "Vacudex," advertised as a device to save gasoline and effect other economies in the operation of automobiles and trucks. The device consists of a pipe which clamps onto the end

of the exhaust pipe and in which are placed four cones set at angles so that as the vehicle moves forward air is forced into the cones and presumably creates a spiral motion of the air in the exhaust pipe.

In the course and conduct of their business the respondents cause said product, when sold, to be transported from their 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. 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 business, and for the purpose of inducing the purchase of said product in commerce, respondents have made and are now making certain false, deceptive, and misleading statements and representations regarding said product by means of radio broadcasts, circulars and advertisements inserted in newspapers and periodicals circulated generally among the purchasing public. Typical representations are as follows:

Vacudex saves gas and oil.

Vacudex adds 18 to 50 miles more a tankful.

Also adds power and pep to your motor.

Creates suction and like a vacuum cleaner draws carbon, oil and moisture from muffler * * * thereby eliminating back pressure.

Saves mufflers.

Saves tail pipes.

Motor vibration is reduced.

Deadly carbon monoxide gas reduced.

Improves pickup and flexibility, motors run smoother and quieter, mufflers last longer.

Saves tires.

PAR. 4. Through the use of the foregoing statements and representations and others of similar import and meaning, not specifically set out herein, the respondents have represented and are now representing, among other things, that the device designated as "Vacudex," when attached to the exhaust of an automobile or truck, will save gasoline and oil and increase the mileage obtained from a tankful of gas 18 to 50 miles; that it will increase power of the motor and cause it to give better performance; that it will draw carbon, oil and moisture from the muffler and eliminate back pressure; that it will lengthen the useful life of tail pipe and muffler; that it will reduce vibration of the motor; that it will decrease the amount of carbon monoxide gas produced by the motor; that it will give the motor greater accelera-

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tion, less strain and cause it to run more smoothly and quietly; that it will cause less wear on tires.

PAR. 5. The foregoing representations are false, deceptive and misleading in the following respects:

The device designated as "Vacudex" does not save gasoline or oil or increase the mileage obtained from gasoline. It does not increase the power of the motor or cause it to give better performance. It does not draw carbon, oil or moisture from the muffler, nor does it eliminate back pressure. It does not lengthen the useful life of either tail pipe or muffler. The device does not reduce vibration of the motor. It does not decrease the amount of carbon monoxide gas produced by the motor. It does not give the motor greater acceleration, or less strain, or cause it to run more smoothly or quietly. It does not cause less wear on tires.

PAR. 6. The use by the respondents of the foregoing false, deceptive and misleading statements, and representations, disseminated as aforesaid in connection with the offering for sale and sale of their product in commerce, has had and now has the capacity and the tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and into the purchase of substantial quantities of such product in commerce because of such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of the 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 11, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Ammiel F. Decker and Mable P. Decker, individuals trading as Decker Products Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by the respondents of their answer to the complaint, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly

came on for hearing before the Commission on the complaint, answer, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, briefs in support of and in opposition to the complaint, and oral argument of counsel; and the Commission, being of the opinion that further laboratory tests of respondents' product should be made and the results of such tests introduced into evidence, issued its order reopening the proceeding for the taking of further testimony and other evidence. Thereafter further testimony and other evidence with reference to results of tests were introduced before the trial examiner and such testimony and other evidence were duly recorded and filed in the office of the Commission. This proceeding again came on for final hearing before the Commission on the complaint, answer, testimony and other evidence, including testimony and other evidence introduced at supplemental hearings, report and supplemental report of the trial examiner and exceptions filed thereto, briefs and supplemental 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. The respondents, Ammiel F. Decker and Mable P. Decker, are individuals trading and doing business under the name Decker Products Co., with their principal place of business located at 313 Fifth Avenue, Pelham, N. Y. Respondents are now, and for some 5 years last past have been, engaged in the sale and distribution of a mechanical device designated by them as "Vacudex" and designed to be attached to the end of the exhaust pipe or tail pipe of automobiles and trucks.

PAR. 2. Respondents cause and have caused their device, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in various other States of the United States. Respondents maintain and have maintained a course of trade in their device in commerce among and between various States of the United States.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their device, respondents have made various representations with respect thereto, such representations having been disseminated among prospective purchasers by

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means of radio broadcasts and by means of advertisements inserted in newspapers, magazines, circulars, and other advertising material. Among and typical of such representations are the following:

VACUDEX

Saves Gas—Saves Tires

The Vacudex is attached on the end of the tail pipe and constantly removes the exhaust like a vacuum cleaner draws dirt out of a rug. Carbon, Oil, and Moisture are removed and back pressure eliminated. That saves power because the motor does not have to drive the exhaust through the resistance of the muffler and pipes. Motor vibration is reduced. *Gasoline and Oil are saved.*

Puts Pep in the Motor and Saves Tires

The added power makes the motor snappy and flexible with a fast, easy pickup. It is not necessary to spin the wheels and grind off rubber to start the car moving. *That saves tires.*

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More Power—More Pep.

Improves Pick-up and Flexibility.

Motors Run Smoother and Quieter.

(Commission Exhibit 5)

PAR. 4. Through the use of these representations and others of similar import respondents have represented, directly or by implication, that their device saves gasoline and oil; that it increases the power of the motor and causes it to give better performance; that it draws carbon, oil, and moisture from the muffler and eliminates back pressure; that it reduces the vibration of the motor; that it gives the motor greater acceleration and causes it to run more smoothly and more quietly; and that it saves tires.

PAR. 5. Respondents' device is a metal pipe approximately 8 inches long and $2\frac{1}{2}$ inches in diameter, into the walls of which are set 4 cones, the cones being set at varying angles. The device clamps onto the end of the exhaust pipe or tail pipe of the automobile. As the vehicle moves forward air is forced through the cones and, according to respondents' theory, creates a spiral motion of the air in the exhaust pipe and eliminates or reduces the "back pressure" or exhaust pressure of the automobile.

The term "back pressure" as applied to an automobile engine means the resistance offered to the flow of the exhaust gases as they pass through the muffler and exhaust pipe. A part of the power produced by the engine must be used to overcome this resistance, i. e., to expel these gases, and respondents' theory is that their device, by eliminating or reducing back pressure, releases this part of the engine's power

for the prime purpose of propelling the automobile. With the exception of certain minor matters not here involved, all of respondents' claims for their device are based upon this theory of the elimination or reduction of back pressure, it being conceded by them that if the device will not reduce back pressure it will not do any of the other things in question.

PAR. 6. At the request of the Petroleum Coordinator for War, tests of respondents' device were made by the National Bureau of Standards in July 1942, and these tests showed that the device does not reduce back pressure. These tests were road tests, and such tests are not as accurate and reliable as laboratory tests. The range of experimental error in road tests is approximately 10 percent, whereas the range in laboratory tests is only about 1 percent. However, certain laboratory tests in regard to back pressure were subsequently made by the Bureau. These laboratory tests, in which respondents' device was not used, were for the purpose of determining how much back pressure would have to be removed in order to affect the operation of an automobile engine. The tests showed that in order to bring about this result the reduction in back pressure would have to be very great—so great that, even after making full allowance for the possibility of experimental error in the road tests, it is evident that respondents' device can have no appreciable effect upon back pressure.

Subsequent laboratory tests were made by the National Bureau of Standards using respondents' device, Vacudex, which showed that the use of said device does not improve the performance of an engine in any way. These tests for power and economy were made on a Ford V-8 engine coupled to an electric dynamometer and equipped with a volumetric fuel meter, tachometer, manometers for measuring pressure in the intake valve and exhaust pipe, and other devices. Road, load, power, and economy tests were made with air speed in the duct equal to the simulated road speed at which the engine was operating. The engine speeds and loads used were those computed as equivalent to road operation at 20, 30, 40, and 50 miles per hour. Two or more tests were made at 20 miles per hour with the Vacudex device attached; then runs were repeated with device removed. No change was made in the throttle setting before the Vacudex device was removed for the tests without the device. The speed and load were then changed and the Vacudex device was again attached and similar runs made until runs were made with and without the Vacudex device at 20, 30, 40, and 50 miles per hour. The results of these tests were that there was no measurable change in exhaust pressure, either before or after the muffler,

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when the Vacudex device was removed and that the Vacudex device has no measurable effect on fuel consumption, power, or engine performance.

PAR. 7. Based upon the results of tests conducted by the National Bureau of Standards and based upon testimony of the Bureau of Standards expert on automotive engines and after giving consideration to the evidence of tests and testimony of experts introduced by the respondents, the Commission finds that respondents' device, Vacudex, will not eliminate or reduce back pressure and is incapable of accomplishing the results claimed for it by the respondents. The Commission further finds that said device will not save gasoline or oil, increase the power of the motor, or cause the motor to give better performance. Said device will not draw carbon, oil, or moisture from the muffler and will not reduce the vibration of the motor. It will not give the motor greater acceleration or cause it to run more smoothly or more quietly. The use of said device will have no value in saving tires.

PAR. 8. The Commission has given careful consideration to the reports of tests introduced by respondents and the testimony of witnesses in connection therewith and is of the opinion, and finds, that such testimony and other evidence do not overcome the greater weight of the testimony and other evidence introduced in support of the complaint.

PAR. 9. The use by the respondents of the foregoing erroneous and misleading representations has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' device and the results which may be accomplished through the use of such device, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondents' device as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents 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 the respondents, testimony and other evidence introduced before a trial examiner

of the Commission theretofore duly designated by it, report and supplemental report of the trial examiner upon the evidence and the exceptions filed thereto, briefs and supplemental briefs filed in support of and in opposition to the complaint, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Ammiel F. Decker and Mable P. Decker, individually and trading as Decker Products Co., or trading under any other name, and their 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, or respondents' mechanical device designated "Vacudex," or any substantially similar device, whether sold under the same name or any other name, do forthwith cease and desist from representing, directly or by implication, that said device or any substantially similar device will:

1. Eliminate or reduce back pressure.
2. Save gasoline or oil.
3. Increase the power of the motor or cause it to give better performance.
4. Draw carbon, oil, or moisture from the muffler.
5. Reduce the vibration of the motor.
6. Give the motor greater acceleration or cause it to run more smoothly or more quietly.
7. Save tires.

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.

Commissioner Mason not participating.

IN THE MATTER OF
TEMPLE BAR COLLEGE, HILMER B. SANDINE, L. B.
RENNEWANZ AND J. O. KINNAMAN

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5150. Complaint, Apr. 15, 1944—Decision, July 3, 1947

Where K., who (1) was engaged, along with R., in interstate sale and distribution of courses of home study in various subjects, and in issuance and sale of college degrees without requiring purchasers to complete courses of study necessary to issuance thereof, and in conducting, for their own personal advantage and gain, as though no corporate entity existed, the affairs of a corporation and its successor—the corporate names of which respectively included the word “College”, and the words “Extension College,” and the business of which was carried on by said R., the only person with an active interest therein, from rented desk space in a Seattle office, under the designations “Educational Director,” and “Chairman, Board of Trustees”; and who (2) was a traveling lecturer on religious subjects and was listed in the original catalog as a member of the faculty, and in that of its successor as “Director, Divinity Department,” and as Advisory Member of said college, and who had prepared some courses of study in Biblical archeology and corrected and graded papers submitted by correspondence students taking such particular courses;

Acting under a plan of procedure devised and developed by them—

- (a) From time to time contacted prospects for various degrees, recommended the issuance of the degrees to such individuals, collected from them the cost and remitted it to said R., and in many instances personally and publicly conferred the degrees upon such purchasers; with no requirement whatsoever other than the payment of the fee, prior to 1941, and with the requirement thereafter that the candidate write and submit a thesis upon some subject agreeable to him and to said K.; and
- (b) From time to time made suggestions in connection with the kind of degree which should be issued, and also with reference to the form and nature of the thesis which might be required; in several instances objected to the use of the word “Extension” in the name of the college on the degree and, on one occasion, requested that an old form carrying the name of the original corporation and including therein the word “College” rather than “Extension College” be made use of; and

Where said R., pursuant to such request—

- (c) Advised said K. that she had reserved an old degree of the prior corporation for issuance to the candidate and supplied K. with an application for degree, formerly used by said prior corporation;

The facts being that the business in question was not an institution of higher learning; it had no faculty, and no degrees issued under either corporate name were recognized by any reputable institution of higher learning; and the preparation and submission of a thesis in connection with the obtaining of a degree was a subterfuge, as there was no one connected with said individuals or corporation, qualified to give consideration to such a thesis,