

Complaint

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IN THE MATTER OF

GENERAL MOTORS CORP.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4724. Complaint, Mar. 6, 1942—Decision, Jan. 27, 1948*

Where a corporation engaged through its operating and manufacturing divisions and its wholly owned subsidiary corporations in the manufacture and assembly, and interstate and foreign distribution and sale of motor vehicles, parts, accessories and equipment therefor, including "fog lamps," some of which were made by it through purchase of the sealed optical units and the assembling thereof within a housing, and others of which were purchased from its competitors, and all of which had molded into the glass on the lens the descriptive term "fog"—

Represented in an advertisement relating to passing lamps and fog lamps and devices in connection therewith, in the "Chevrolet Dealer News" (a monthly periodical not associated with it), that such "fog lamps" would penetrate fog, cut under all fogs, and enable the driver to see clearly under all adverse weather conditions, through statement that "powerful flat-top beam of amber light penetrates, cuts under fog, and is not reflected back into the driver's eyes," etc.;

The facts being that, while said lights, properly mounted, might assist the driver of a car to drive through fog, and would afford greater visibility than ordinary lamps under many circumstances, said lamps would not penetrate fog, nor cut under all fogs, nor enable driver to see clearly under all adverse weather conditions; and while, when properly designed, mounted, and aimed, said lamps would reduce reflected extraneous light to a much greater degree, and because of their low, flat-top beams, afford greater visibility in adverse weather conditions, than ordinary headlamps, use thereof would not prevent all light being reflected into the driver's eyes;

With capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true under all conditions, and thereby cause said public to buy substantial quantities thereof:

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.

Mr. John W. Brookfield, Jr., for the Commission.

Mr. Henry M. Hogan, of Detroit, Mich., 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 General Motors Corp., a corporation, hereinafter referred to as respondent, has violated the

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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, General Motors Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and having its principal place of business in the city of Detroit, State of Michigan.

PAR. 2. Respondent, General Motors Corp., for several years last past has been engaged in the manufacture of motor vehicles, parts, accessories, and equipment therefor. Said manufacturing business, and the business of advertising, selling, and disposing of the articles so manufactured, is conducted by the said respondent, General Motors Corp., through various wholly owned subsidiary corporations, operating and manufacturing divisions, one of which is known as the Guide Lamp Division, General Motors Corp., having its factory and principal place of business at Anderson, Ind. The said Guide Lamp Division of General Motors Corp. manufactures, among other things, a part or accessory for use on cars manufactured by the said General Motors Corp. and cars manufactured by other motorcar manufacturers, known and described by it as a "Fog Lamp." Said Guide Lamp Division of General Motors Corp. is entirely owned and operated by the said General Motors Corp., or one of its wholly owned subsidiary corporations, and the officers and directors of the said General Motors Corp. have complete control of the acts, practices, and activities of the said Guide Lamp Division of the General Motors Corp. Said motor vehicles, parts, lamps, and accessories so manufactured by the General Motors Corp., through its operating and manufacturing divisions and its wholly owned subsidiary corporations, when sold, are transported from the State or States in which they are manufactured to the purchasers thereof located in a State or States other than the State in which such shipment or shipments originated and in the District of Columbia, and said products are also extensively sold and shipped to various foreign countries.

PAR. 3. In the course and conduct of its business as described in Paragraph Two hereof, the respondent, General Motors Corp., did, through its Guide Lamp Division and through its various wholly owned subsidiary corporations, manufacture, advertise, promote the sale of, and sell an accessory or fixture known as a fog lamp, for use on cars manufactured by it or on cars manufactured and sold by its competitors. In the course and conduct of its said business, the General Motors Corp., acting through its various operating and manufac-

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turing divisions and its wholly owned subsidiary corporations, did advertise and represent to the public that the said fog lamp manufactured and sold by it possesses certain qualities, among others, as follows, to wit:

Powerful flat-top beam of amber light penetrates, cuts under fog, and is not reflected back into the driver's eyes.

Complete control of the car through the ability to see clearly the road ahead, is essential to safe driving at night. Even under adverse driving conditions such as rain, snow, fog, and dust, Genuine G. M. Passing Lamps and Fog Lamps add immeasurably to safety.

DISPLAY—DEMONSTRATE—SELL LIGHTS ALL DAY—EVERY DAY. GUIDE LAMP DIVISION, GENERAL MOTORS CORPORATION, ANDERSON, INDIANA.

PAR. 4. In truth and in fact, the aforesaid so-called fog lamp does not penetrate fog or cut under fog and does not permit a driver using said lamp to have complete control of his car and to see clearly the road ahead under adverse driving conditions such as rain, snow, fog, and dust, nor does the use of said lamp add immeasurably to safety under such conditions. The use of said lamp does not prevent light from being reflected back into the driver's eyes, and light therefrom is reflected back into the driver's eyes when used under fog conditions.

PAR. 5. The representations made by the respondent, through its operating and manufacturing divisions and its wholly owned subsidiary corporations, as set forth in paragraph 3 hereof, have the capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the said representations are true, and, as a result of said erroneous and mistaken belief, cause the purchasing public to buy substantial quantities of said fog lamps.

PAR. 6. The aforesaid acts and practices of the respondent, through its operating and manufacturing divisions and its wholly owned subsidiary corporations, as 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 March 6, 1942, issued and subsequently served its complaint in this proceeding upon the respond-

ent, General Motors Corp., a corporation, charging it 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 the answer of the respondent thereto, a stipulation as to the facts was entered into, subject to the approval of the Commission, whereby it was stipulated that the statement of facts set out therein might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto and that the Commission might proceed upon said complaint, answer, and said 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 upon said complaint, answer thereto, and stipulation, said stipulation having been approved, accepted, and filed by the Commission; and the Commission, having duly considered the matter and being now 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, General Motors Corp., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having a principal place of business in the city of Detroit, State of Michigan.

PAR. 2. Respondent, General Motors Corp., in 1941 converted its manufacturing facilities to the production of war products. For several years prior to 1941, the respondent, General Motors Corp., was engaged in the manufacture of motor vehicles, parts, accessories, and equipment therefore. Said manufacturing business, advertising, selling, and disposing of the articles so manufactured was conducted by the said respondent through various wholly owned subsidiary corporations, operating and manufacturing divisions, one of which was known as the Guide Lamp Division, General Motors Corp., having its factory and principal place of business at Anderson, Ind. The said Guide Lamp Division in the course of its business, purchased sealed optical units consisting of reflectors, lens, and filament and incandescent bulbs from manufacturers such as General Electric and Westinghouse Electric, which sealed units, when manufactured, bear the

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descriptive term "fog" molded into the glass on the lens. Said Guide Lamp Division assembled such optical units within a housing and distributed the finished part or accessory known and described by it as a fog lamp, among other things, for use on cars manufactured by the said General Motors Corp. and cars manufactured by other motorcar manufacturers. Said Guide Lamp Division of General Motors Corp. was entirely owned and operated by the said General Motors Corp. or one of its wholly owned subsidiary corporations, and the officers and directors of the said General Motors Corp. had complete control of the acts, practices, and activities of the said Guide Lamp Division of General Motors Corp. Said motor vehicles, parts, lamps, and accessories so manufactured, assembled, or distributed by General Motors Corp. through its operating and manufacturing divisions and its wholly owned subsidiary corporations, when sold, were transported from the State or States in which they were manufactured to the purchasers thereof located in a State or States other than the State in which such shipment or shipments originated and in the District of Columbia and said products were also sold and shipped to various foreign countries.

PAR. 3. In the course and conduct of its business as described in paragraph 2 hereof, the respondent, General Motors Corp., did, through its Guide Lamp Division, purchase from outside manufacturers and assemble as set forth in paragraph 2, and through its various divisions and wholly owned subsidiary corporations advertise, promote the sale of, and sell, an accessory or fixture known as a fog lamp for use on cars manufactured by it or on cars manufactured and sold by its competitors. These other divisions and wholly owned subsidiary companies also purchased, advertised, and promoted the sale of an accessory or fixture known as a fog lamp manufactured by respondent's competitors. These fog lamps also had the descriptive term "fog" molded into the glass on the lens. In the course and conduct of its said business, respondent, General Motors Corp., caused an advertisement to be inserted in a magazine known and described as Chevrolet Dealers News (which is not connected with Chevrolet or General Motors Corp.) in the May 1940 issue, relating to passing lamps and fog lamps and devices in connection therewith. The Chevrolet Dealers News is a magazine published monthly in Chicago by George N. Diederich, who is not associated with General Motors Corp. The Chevrolet Dealers News sells at 20 cents a copy and is distributed among dealers in Chevrolet automobiles, parts, and accessories manufactured and distributed by General Motors Corp. through-

out the United States. The said advertisement appeared on the inside of the back cover page of said magazine and read in part as follows:

FOG LAMP

The 1940 edition of a long famous fog lamp. Powerful flat-top beam of amber light penetrates, cuts under fog and is not reflected back into the driver's eyes. Improved throughout—headed for greater sales than ever. Part No. 985772 (pair), 985571 (Single).

PAR. 4. In truth and in fact, respondent's so-called fog lamps will not penetrate fog, nor will they cut under all fogs. The use of said lamps will not enable the driver of an automobile so equipped to see clearly under all adverse weather conditions. Said lights, properly mounted, however, may assist the driver of an automobile equipped with them to drive through fog and will afford greater visibility than ordinary lamps under many circumstances. The use of fog lamps distributed by respondent will not prevent all light being reflected into the driver's eyes, although when properly designed, mounted, and aimed, said lamps will reduce reflected extraneous light to a much greater degree than ordinary head lamps, and because of their low, flat top beam, will afford greater visibility in adverse weather conditions than ordinary head lamps.

PAR. 5. The representations made by the respondent through its operating and manufacturing divisions and its wholly owned subsidiary corporations in the manner and form as hereinabove described, had the capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations were true under all conditions, and as a result of said erroneous and mistaken belief, caused the purchasing public to buy substantial quantities of said fog lamps.

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, the answer of the respondent, and a stipulation as to the facts, in which stipulation the respondent waived all intervening procedure and further hearings as to said

facts, 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 the respondent, General Motors Corp., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of fog lamps and other similar automobile accessories in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondent's fog lamps will penetrate fog or cut under all fogs.

2. Representing that the use of said lamps will prevent all light being reflected into the driver's eyes or that its value in this respect is greater than the reduction of reflected extraneous light to a degree greater than ordinary head lamps and the affording of greater visibility in adverse weather conditions.

3. That the use of said fog lamps alone will enable the driver of an automobile so equipped to see clearly under all adverse weather conditions.

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.

Syllabus

IN THE MATTER OF

PLAZA LUGGAGE & SUPPLY CO., INC., AND BENJAMIN GOLDSTEIN AND ABRAHAM GOLDSTEIN, TRADING AS U. S. LUGGAGE & LEATHER PRODUCTS CO.

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

Docket 4857. Complaint, Oct. 19, 1942—Decision, Jan. 30, 1948

Where two partners engaged in the interstate sale and distribution of a substantial volume of luggage, billfolds, and kindred merchandise to customers who included business concerns and groups of associated individuals buying for their own use or that of their employees and not for resale; and operating in conjunction with a certain corporation, since dissolved, in carrying on their said business, particularly with respect to the acts and practices herein concerned—

- (a) Represented that they manufactured the merchandise sold or distributed by them through use in their catalogs and on letters, cards and billheads of such expressions as "Manufacturers: Luggage," etc., "Designers and Manufacturers", etc., and "Mfrs. Luggage and Leather Products," etc., and through depictions in catalogs of factory operations showing products in various stages of manufacture; and
- (b) Represented that the prices set out in their catalogs were the prices at which merchandise concerned or comparable merchandise was ordinarily sold by retailers, and that the stated discounts represented savings to purchasers from the usual retail prices, through depicting practically all items offered for sale in their catalogs together with list prices and such statements as "50% discount on all prices in this catalog";

The facts being that said individuals were neither wholesalers nor manufacturers, but retailers; so-called list or catalog prices were not, as understood by the public on the basis of recognized business custom, approximate retail prices, discount from which represented retailer's profit, but were arbitrarily fixed amounts which, when reduced by the stated discounts, resulted in the customary retail prices for which the articles were sold by said individuals and other retailers in the usual course of business; they never owned a manufacturing plant or equipment but bought their merchandise from others; and prices in question, after application of discounts involved, were substantially in excess of those at which manufacturers, wholesalers, or distributors sold comparable merchandise, and were not wholesale prices;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public, which prefers to buy merchandise directly from manufacturers and wholesalers as affording lower prices, superior quality, and other advantages, into the mistaken belief that they could obtain the merchandise advertised by said individuals at wholesale prices, and that they were dealing direct with the manufacturers, and with capacity thereby to induce purchasers to buy their products: