

IN THE MATTER OF
KENITE LABORATORY, INC.

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

Docket 4976. Complaint, June 4, 1943—Decision, Mar. 31, 1948

Where a corporation engaged in the interstate sale and distribution of a product which was designated "Kek" and advertised and used as a boiler cleaner and steam conditioner; in advertising folders, pamphlets, circular letters, labels, and other advertising material, directly and by implication—

- (a) Falsely represented that its said product was an effective cure for defective heating generally and could be depended upon to separate foreign matter from the water in a boiler;
- (b) Represented falsely that use thereof would increase steam pressure in a boiler or heating system, and create dry steam; that it could be depended upon to cause an abundance of steam to fill and heat radiators; and that it would otherwise eliminate defective steaming conditions in cast iron or steel boilers;

The facts being that it would not bring about such results when any of said conditions were caused by mechanical defects not associated with the contamination of the water in the system, such as faulty installation of the heating system, defective check valves, leaky condensers, etc.;

- (c) Falsely represented that defective steaming conditions are prevalent in cast iron and steel boilers;
- (d) Falsely represented that it would completely remove the scale from boilers;
- (e) Falsely represented that it would correct the inefficiency of a steam heating system as indicated by its inability to raise steam pressure, water leaving the boiler when the pressure rises, hammering in pipe lines and radiators, water in radiators, ejection of water by air valves, or excessive fuel consumption;

The facts being that said manifestations may be caused by mechanical defects not associated with the contamination of the water in the system; and

- (f) Represented that a certain testing powder or chemical supplied by it could be depended upon to determine whether the water content of a boiler contained ingredients deleterious to the boiler or heating system;

The facts being the results of such tests were limited to a determination of whether the boiler contents had an alkalinity greater than approximately pH 8.5; a certain amount of alkalinity in a boiler or heating system is necessary for the proper operation thereof; and other tests than that recommended by it are necessary to determine specifically the hardness of the water or the presence of calcium, magnesium, chlorides, sulfurs, dissolved carbon dioxide and other chemicals in a boiler, presence of which its said testing chemicals would not specifically disclose;

With effect of misleading prospective purchasers into the mistaken belief that its said product would accomplish all the results claimed therefor and thereby causing a substantial portion to purchase the same:

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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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Nathan & Nathan, of New York City, 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 Kenite Laboratory, Inc., a corporation, hereinafter referred to as respondent, has 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, Kenite Laboratory, Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 83 Murray Street, New York, N. Y.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a product called "Kek" used as a boiler cleaner and steam conditioner. Respondent causes its said product, when sold by it, to be transported from its aforesaid place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade of 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 its aforesaid business and for the purpose of inducing the purchase of its product, "Kek," the respondent has circulated, and is now circulating, among respective purchasers throughout the United States by United States mails, by means of advertising folders, pamphlets, circular letters, labels, and other advertising material, all of general circulation, many false statements and representations concerning its said product, "Kek." Among and typical of such false statements and representations are the following:

KEK

CURE for defective heating KEK will quickly and efficiently separate the foreign matter from the water of the boiler thereby causing an abundance of steam to fill and heat all radiators.

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KEK eliminates defective steaming conditions so prevalent with cast iron and steel boilers.

KEK will completely remove the scale that insulates and retards the free transfer of heat through the boiler walls from the fire box. The following symptoms indicate the inefficiency in a Steam heating system that an application of KEK will correct.

Inability to raise steam pressure.

Water leaving boiler when pressure rises.

Hammering and knocking in pipe lines and radiators.

Inability to heat all radiators.

Water in radiators.

Air valves ejecting water.

Excessive fuel consumption.

Creates Dry Steam.

As a further means to induce the purchase of its preparation, Kek, the respondent has distributed through plumbing supply houses and plumbing contractors for distribution to the public a leaflet to which is attached small envelopes containing powdered chemicals to be used in testing water in heating systems. The directions pertaining to the use of said chemicals in making the test read as follows:

MAKE THIS SIMPLE TEST

Draw a glass of water from the Try-cock of your Steam Boiler and another glass from any household faucet. Pour half the contents of this envelope into each. Then note the difference.

If the boiler water turns RED or PINK you are not getting full heat value from the fuel consumed.

Have your heating contractor KEK your boiler.

How to determine the amount of KEK necessary for complete satisfaction:

1. Draw a glass of water from the boiler Try-cock.
2. Open envelope and pour powder into glass.
3. If water turns RED pour contents of can into boiler.

PAR. 4. Through the statements and representations hereinabove set forth and others similar thereto but not specifically set out herein, the respondent has represented, directly or by implication, that its product, Kek, is an effective cure for defective heating generally, and can be depended upon to separate the foreign matter from the water and cause an abundance of steam to fill and heat radiators; that it eliminates defective steaming conditions so prevalent in cast iron or steel boilers; that it will completely remove the scale from boilers; that its product, Kek, will raise steam pressure, that it will cause radiators to heat; that it creates dry steam; that it will prevent water from leaving boilers when pressure rises; that it prevents hammering and knocking in pipe lines and radiators; that it prevents the escape of water from radiators and prevents the ejection of water from air

valves; that it will conserve fuel; that its testing powder or chemical can be depended upon to determine whether the water content of boilers contains ingredients deleterious to the boiler or heating systems.

PAR. 5. The foregoing claims, statements and representations are grossly exaggerated, false and misleading. In truth and in fact, said product is not an effective cure for defective heating, and cannot be depended upon to separate the foreign matter from the water; it does not cause an abundance of steam to fill and heat radiators; it does not eliminate defective steaming conditions in cast iron or steel boilers—defective steaming conditions are not prevalent in cast iron and steel boilers; it does not completely remove the scale from boilers; the inefficiency in a steam heating system indicated by the inability to raise steam pressure, water leaving the boiler when pressure rises, hammering in pipe lines and radiators, water in radiators, air valves ejecting water or excessive fuel consumption is largely caused by mechanical defects such as faulty installation of the system, defective check valves, leaky condensers, and other mechanical defects not associated with the contamination of the water in the system. Respondent's product does not increase the steam pressure; it does not cause radiators to heat, and does not create dry steam. Said preparation cannot be depended upon to prevent water from leaving boilers when pressure rises; it does not prevent hammering and knocking in pipe lines and radiators; it does not prevent water from escaping from radiators or prevent the ejection of water by air valves, or conserve fuel. Tests conducted by the use of the testing chemicals supplied by respondent cannot be depended upon to determine whether the water content of boilers contains ingredients deleterious to the boilers or heating systems. The efficiency of such test made by such testing chemicals is limited to that of determining whether the boiler contents are alkaline. Said chemical preparation consists of about 62 percent phenolphthalein and 38 percent organic salt, which is used as a diluent. A certain amount of alkalinity in a boiler or heating system is necessary for the proper operation of said boiler or heating system. Other tests are necessary to determine the hardness of the water, the presence of calcium, magnesium, chlorides, sulfurs, dissolved carbon dioxide, and other chemicals, and respondent's testing chemicals would not disclose any of these conditions.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations, disseminated as aforesaid, 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 advertisements are true, and to induce the public

to purchase substantial quantities of respondent's product as a result of such belief.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the 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 June 4, 1943, issued and subsequently served its complaint in this proceeding on the respondent, Kenite Laboratory, Inc., a corporation, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondent's answer to said complaint a trial examiner of the Commission was duly designated by it to take testimony and receive evidence in support of and in opposition to the allegations of the complaint, and at a hearing held on June 16, 1947, counsel for respondent and counsel supporting the complaint entered into a written stipulation as to the facts which was incorporated into the record and in which it was agreed that the statement of facts contained therein may be accepted in lieu of all other evidence. Said stipulation further provided that the Commission may proceed upon said statement of facts to make its report stating its findings as to the facts, including inferences which it may draw from said stipulated facts, and its conclusions based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, the stipulation as to the facts, the recommended decision of the trial examiner and exceptions thereto filed by counsel for the respondent, and briefs in support of and in opposition to the allegations of the complaint, which were filed (no oral argument 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. The respondent, Kenite Laboratory, Inc., is a corporation organized and existing under and by virtue of the laws of the

State of New York, with its office and principal place of business located at 83 Murray Street, New York, N. Y.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of a product designated "Kek" which is advertised and used as a boiler cleaner and steam conditioner. The respondent causes this product, when sold, to be transported from its place of business in the State of New York to purchasers thereof located in various other states of the United States and in the District of Columbia; and the respondent maintains, and at all times mentioned herein has 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 its business and for the purpose of inducing the purchase of its product "Kek" the respondent has circulated among purchasers and prospective purchasers throughout the United States by the use of the United States mails and by means of advertising folders, pamphlets, circular letters, labels, and other advertising material, many statements and representations concerning said product. Among the typical of such statements and representations are the following:

KEK

CURE for defective heating. KEK will quickly and efficiently separate the foreign matter from the water of the boiler thereby causing an abundance of steam to fill and heat radiators.

KEK eliminates defective steaming conditions so prevalent with cast iron and steel boilers.

KEK will completely remove the scale that insulates and retards the free transfer of heat through the boiler walls from the fire box.

The following symptoms indicate the inefficiency in a steam heating system that an application of KEK will correct.

- Inability to raise steam pressure.

- Water leaving boiler when pressure rises.

- Hammering and knocking in pipe lines and radiators.

- Inability to heat all radiators.

- Water in radiators.

- Air valves ejecting water.

- Excessive fuel consumption.

Creates Dry Steam.

As a further means of inducing the purchase of said product, the respondent has distributed to the public through plumbing supply houses and plumbing contractors leaflets to which were attached small envelopes containing powdered chemicals to be used in testing water in heating systems. The directions provided by the respondent for the use of these chemicals in making the tests read as follows:

MAKE THIS SIMPLE TEST

Draw a glass of water from the try-cock of your steam boiler and another glass from any household faucet. Pour half the contents of this envelope into each. Then note the difference. If the boiler water turns RED or PINK you are not getting full heat value from the fuel consumed.

Have your heating contractor KEK your boiler.

How to determine the amount of KEK necessary for complete satisfaction:

1. Draw a glass of water from the boiler try-cock.
2. Open envelope and pour powder into glass.
3. If water turns RED pour contents of can into boiler.

PAR. 4. Through the use of the foregoing statements and representations, and others similar thereto, the respondent has represented, directly and by implication, that its product Kek is an effective cure for defective heating generally, and can be depended upon to separate the foreign matter from the water in boilers and cause an abundance of steam to fill and heat radiators; that said product will eliminate defective steaming conditions so prevalent in cast iron and steel boilers; that it will completely remove the scale from boilers; that it will raise steam pressure in a steam heating system, and cause radiators to heat; that it will create dry steam; that it will prevent water from leaving boilers when pressure rises; that it will prevent hammering and knocking in pipe lines and radiators, will prevent the escape of water from radiators and the ejection of water from air valves; that it will conserve fuel; and that the use of respondent's testing powder or chemical can be depended upon to determine whether the water content of a boiler contains ingredients deleterious to the boiler or heating system.

PAR. 5. The respondent's product "Kek" is not in fact an effective cure for defective heating, and it cannot be depended upon to separate foreign matter from the water in a boiler. Said product will not increase steam pressure in a boiler or heating system, or create dry steam, or cause an abundance of steam to fill and heat radiators, and it will not otherwise eliminate defective steaming conditions in cast iron or steel boilers when any of such conditions are caused by mechanical defects such as faulty installation of the heating system, defective check valves, leaky condensers, and other mechanical defects not associated with the contamination of the water in the system. Contrary to the implication in respondent's advertising, defective steaming conditions are not prevalent in cast-iron and steel boilers. The product Kek will not completely remove the scale from boilers. The inefficiency in a steam-heating system indicated by the inability to raise steam pressure, water leaving the boiler when pressure rises, hammering in pipe lines and radiators, water in radiators, air valves ejecting water, or excessive fuel consumption, may be caused by mechanical

defects such as faulty installation of the heating system, defective check valves, leaky condensers, and other mechanical defects not associated with the contamination of the water in the system.

Tests conducted by the use of the testing chemicals supplied by the respondent cannot be depended upon to determine whether the water content of a boiler contains ingredients deleterious to the boiler or heating system. The results of such tests made with respondent's testing chemicals are limited to a determination of whether the boiler contents have an alkalinity greater than approximately PH. 8.5. The chemical preparation provided by respondent consists of about 62 percent phenolphthalein and 38 percent organic salt, which latter is used as a dilutant. A certain amount of alkalinity in a boiler or heating system is necessary for the proper operation of the boiler or heating system. Other tests than that recommended by respondent are necessary to specifically determine the hardness of the water or the presence of calcium, magnesium, chlorides, sulfurs, dissolved carbon dioxide, and other chemicals in a boiler, and the respondent's testing chemicals will not specifically disclose the presence of any of these elements.

PAR. 6. The Commission therefore finds that the statements and representations referred to in paragraphs 3 and 4 hereof are exaggerated, erroneous, and misleading.

PAR. 7. The use by respondent of the aforesaid statements and representations has the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of respondent's product into the mistaken and erroneous belief that its product will accomplish all of the results claimed for it in said statements and representations, and to cause a substantial portion of such purchasers and prospective purchasers, acting on such mistaken and erroneous belief, to purchase said product.

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 on the complaint of the Commission, the answer of the respondent, an agreed stipulation as to the facts entered into between

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counsel for respondent and counsel supporting the complaint, the recommended decision of the trial examiner and exceptions thereto filed by counsel for respondent, and briefs in support of and in opposition to the allegations of the complaint (oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Kenite Laboratory, 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 or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of the respondent's product designated "Kek," or any other product of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from representing, directly or by implication:

1. That said product is an effective cure for defective heating, or that it can be depended upon to separate the foreign matter from the water in a boiler.

2. That the use of said product will increase steam pressure in a boiler or heating system, create dry steam, or cause an abundance of steam to fill and heat radiators, or that it will otherwise eliminate defective steaming conditions in cast-iron or steel boilers when any of such conditions are caused by mechanical defects in the boilers.

3. That said product will completely remove the scale from cast-iron or steel boilers.

4. That said product will correct the inefficiency of a steam-heating system as indicated by its inability to raise steam pressure, water leaving the boiler when the pressure rises, hammering in pipe lines and radiators, water in radiators, ejection of water by air valves, or excessive fuel consumption, when any of these conditions are caused by mechanical defects of the boiler or heating system.

5. That defective steaming conditions are prevalent in cast-iron or steel boilers.

6. That the use of the testing chemicals supplied by respondent to prospective users of its product can be depended upon to determine whether the water content of a boiler contains ingredients deleterious to the boiler or heating system.

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

IRVING HECHTMAN TRADING AS CENTRAL
MERCHANDISE CO.

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

Docket 5257. Complaint, Dec. 5, 1944—Decision, Mar. 31, 1948

Where an individual engaged in the competitive interstate sale and distribution of bedspreads, comforters, fountain pens, cameras, clocks, billfolds, and other merchandise—

- (a) Made use of a selling plan or method under which he distributed to individuals named on mailing lists purchased by him, certain literature and instructions, depictions of various articles, explanatory circulars, order blanks, and push cards for use in accordance with a scheme through which the cost of a chance was determined by the number revealed by a "push," the person selecting by chance the feminine name corresponding with that concealed in the master seal received a "Swiss Weather House" or "weather forecaster," the person securing a certain number received "a genuine leather billfold," and the operator of the card was compensated with one of the "forecasters," following his remission of the sum received from the sale of the chances on the cards; and
- (b) Distributed further to operator-recipients who made use of said push cards and material, and remitted to him as aforesaid described, other sales cards which were similar but usually larger, with more partially perforated discs, and prepared for use in the sale of bedspreads, fountain pens, cameras, table cloths, and other merchandise, along with literature describing and illustrating the particular article thus offered; and

Thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of merchandise, in accordance with his aforesaid plan involving a game of chance or sale of a chance to procure an article of merchandise at much less than the normal retail price thereof, contrary to the established public policy of the Government of the United States and in violation of the criminal laws, and in competition with sellers unwilling to use sales methods contrary to public policy;

With the result that many were attracted by said sales plan with its element of chance, in preference to those of his said competitors, and trade in commerce was diverted unfairly from them to him, and with capacity and tendency so to divert trade, to the substantial injury of such competitors;

- (c) Falsely and misleadingly represented, through such statements in his said literature in further pursuance of his sales plan as "extra gift," "extra free gift," "Want a 4-Star Fountain Pen As A Gift?," that the merchandise referred to was distributed free or given without consideration or cost; when in fact it was provided only as compensation to the operators of his said sales plan and was in no instance given without the rendering of services;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous belief that the merchandise referred to was