

IN THE MATTER OF
G. S. BLAKESLEE & CO.

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

Docket 4678. Complaint, Jan. 23, 1942—Decision, Dec. 30, 1948

As respects the question as to whether or not a certain solvent, used in synthetic solvent degreasing machines, may be properly characterized as more toxic, poisonous, or dangerous than certain others thus used, it appearing that all are poisonous and toxic to some extent and, if allowed to come in contact with the skin or if the vapors thereof are inhaled, are dangerous to life and health, and, furthermore, that all, if not properly handled or used in such machines will cause illness to the operators—dangers which are increased by repeated contacts therewith: it is deceptive and disparaging for the seller of certain of the other solvents competitive therewith to refer to said particular solvent as more toxic, poisonous and dangerous than theirs.

In such a connection the nature of the impairment to health which results from contacts with such particular solvent is immaterial and reference thereto is deceptive and disparaging; and while in scientific circles distinctions as to the safety or dangerous character of such particular solvent may be justified, in the commercial world broad distinctions as to the relative safety or dangerous character thereof are not justified, and, in connection with the sale thereof, constitute false and deceptive acts and practices and an unfair, false and misleading method of competition.

Where a corporation which (1) was engaged in the manufacture of synthetic solvent degreasing machines for use in the cleaning of oil and grease from metal products, and in the interstate sale and distribution thereof, and of its "Blacoslov" synthetic degreasing solvents consisting of trichlorethylene, made by du Pont prior to January 1, 1947; (2) together with the Detroit Rex Products Co. made all except a limited number of such degreasing machines, and, along with it, was party to a number of agreements and arrangements with the du Pont Co., covering the manufacture of such machines, and the distribution of du Pont's synthetic degreasing solvents, including said Detroit Rex, "Triad" and "Perm-A-Clene"; and which (3) along with said Detroit Rex, under such arrangements, handled a large part of the distribution of the degreasing solvents of du Pont who sold trichlorethylene also as "Triclene-D" (or, formerly, as "Cecolene No. 1"), and perchlorethylene as "Percline" (or, formerly, as "Cecolene No. 2") for use in such machines;

In promoting the sale and distribution of its "Blacoslov" synthetic solvent through salesmen and technical servicemen who called upon jobbers, distributors and users of degreasing equipment—often in the company of salesmen employed by the jobbers and distributors; were instructed by the main office on competitive products and the manner in which to deal with problems met in the field; and sometimes carried with them equipment for testing degreasing solvents, which prior to 1938, included the products of a

number of other producers and consisted mainly of trichlorethylene or solvents made therefrom and, beginning in 1938, the product of the Kolene Corp., which as "Kolene-T" prior to December 1939, was made of carbon tetrachloride, trichlorethylene and benzol, and after that date, as "Kolyte," of trichlorethylene, perchlorethylene and benzol or toluol—

- (a) Represented through letters and otherwise to owners and users of synthetic degreasing machines, manufacturers of such machines and distributors and others interested in the sale and use of synthetic solvents, that only the du Pont solvents named above should be used in the degreasing machines sold by it, and that the degreasing solvents sold by said Kolene Corp., should not be used therein, through such statements as that "Kolene" had no merit as a degreasing agent because it was a mixture containing carbon tetrachloride, plus some benzol, petroleum, naphtha, or something of that kind, which are without value for degreasing;

The facts being that while said du Pont had had such samples of said Kolene synthetic solvents analyzed in its laboratories and had furnished said manufacturer with a number of reports thereof, it had not determined the true composition of "Kolene-T," and neither it nor said corporation was in a position to represent to the trade just what the components or properties of said product were;

- (b) Represented that "Kolene," being a solvent mixture was not a suitable or satisfactory degreasing solvent, because mixed solvents are hard, unsatisfactory and dangerous to use in synthetic solvent degreasing machines; that it was not to be compared with trichlorethylene sold by it under the name of "Blacosolv," being far inferior thereto for degreasing purposes and without its proven merits; and that, upon being heated in the course of degreasing in said machines, it would separate, break-down, form acid, and react against and corrode both the metals being degreased and the degreasing machines; whereas trichlorethylene and "Blacosolv" were stable solvents which were free from such faults;

The facts being that said "Kolene-T" had been used successfully for degreasing purposes, and gave satisfactory results without undue or unusual harmful effects on either the metals being degreased or the machines; said trichlorethylene and "Blacosolv" made by du Pont, when in contact with metals and also in the presence of water encountered in degreasing operations in such machines, were subject to the same faults as carbon tetrachloride, and needed to be handled the same as said "Kolene T" in order to insure satisfactory results;

- (c) Represented falsely that "Kolene-T" was more toxic, poisonous, and dangerous to life and health than trichlorethylene or "Blacosolv"; that it was dangerous because it contained carbon tetrachloride and benzol; whereas trichlorethylene and "Blacosolv" were comparatively harmless and not a health hazard when used in such machines;

The facts being that all of the products mentioned as used for degreasing purposes are to some extent poisonous and toxic, and, if allowed to come in contact with the skin, or if the vapors thereof are inhaled, are dangerous to life and health; all, if not properly handled or properly used in such machines, will cause illness to the operators—dangers which are increased by continued and repeated contact therewith;

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- (d) Represented that said "Kolene" would catch on fire and explode if used in synthetic solvent degreasing machines, because it contained benzol; that it was inflammable and explosive because it contained benzine, gasoline, naphtha or one of the petroleum products called "naphtha"; that it constituted a fire hazard and risk when used in such machines and was more inflammable and explosive than trichlorethylene or "Blacosolv", and that it would, in general, not flash or catch on fire up to the initial boiling point; whereas, trichlorethylene and "Blacosolv" were not flammable or explosive and could be used, heated and distilled in such machines without risk of fire or explosion;

The facts being that said "Kolene-T" would not catch on fire or explode when used in such machines, and use thereof under standard or usual conditions did not constitute a fire hazard or risk to the owners and users thereof; when thus used it was not flammable, nor more, so, or more explosive, than "Blacosolv", trichlorethylene, or perchlorethylene or the solvents made therefrom by du Pont; it was never made with benzine or "petroleum naphtha," which would have made it more inflammable; its component "benzol" was not a petroleum derivative; and, as reported by Underwriters Laboratories, its fire hazard was "very small", and its rating for flammability the same as that given both trichlorethylene and "Blacosolv"; and,

- (e) Falsely represented that proof of the above-mentioned properties of "Kolene" had been made by it and by du Pont;

With result of placing in the hands of distributors and others the means of passing on to purchasers the information thus provided; and with tendency and capacity to mislead and deceive a substantial portion of the purchasing public, and induce its purchase of said corporation's product in preference to purchase of said "Kolene-T"; and thereby unfairly to divert trade from the sellers thereof to said corporation and to the sellers of latter's products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and of its competitors, and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

Mr. D. E. Hoopingarner and Mr. John R. Phillips, Jr., for the Commission.

D'Ancona, Pflaum, Wyatt, Marwick & Riskind, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that G. S. Blakeslee & Co., 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

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PARAGRAPH 1. Respondent, G. S. Blakeslee & Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 1844 South Fifty-second Avenue, Cicero, Ill.

PAR. 2. (1) Respondent is now, and for more than 2 years last past has been, engaged in the manufacture, sale, and distribution of synthetic solvent degreasing machines, some of which are called "Blakeslee Degreasers," used in solvent degreasing, being the cleaning of metal products from oil and grease, and in the sale and distribution of synthetic degreasing solvents, consisting of trichlorethylene, sold by respondent under the name of "Blacosolv." Respondent is now causing, and has caused, said synthetic degreasing solvents, when sold, to be transported from places located in various States of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said synthetic degreasing solvents, in commerce among and between the various States of the United States and in the District of Columbia.

(2) In the United States almost all of the synthetic solvent degreasing machines are sold by one of three companies, namely, respondent, also Detroit Rex Products Co., a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business in Detroit, Mich.; and E. I. du Pont de Nemours & Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business in Wilmington, Del. These three companies are parties to agreements and arrangements covering the manufacture of synthetic solvent degreasing machines and also covering the distribution of synthetic degreasing solvents made by E. I. du Pont de Nemours & Co., Inc. Detroit Rex Products Co. sells and distributes synthetic degreasing solvents, consisting of trichlorethylene, under the name of "Triad," and "Perma-A-Clor." Respondent and Detroit Rex Products Co. sell degreasing solvents manufactured only by E. I. du Pont de Nemours & Co., Inc., and, under the arrangements aforesaid, handle a large part of the distribution of the degreasing solvents manufactured by said company. E. I. du Pont de Nemours & Co., Inc., also sells trichlorethylene, under the name of Cecolene No. 1, and perchlorethylene, under the name of Cecolene No. 2, for use in synthetic solvent degreasing machines,

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which it distributes, in part, through a number of authorized distributors located in various States.

(3) Said E. I. du Pont de Nemours & Co., Inc., also sells trichlorethylene, under the name of "Tri-Clene," and perchlorethylene, under the name of "Per-Clene," for use in synthetic solvent dry-cleaning machines, and distributes said synthetic dry-cleaning solvents through a number of authorized distributors located in various States, including jobbers handling chemicals, and Columbia Appliance Corp., a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business in New York, N. Y. Columbia Appliance Corp. is engaged in the manufacture and sale of synthetic solvent dry-cleaning machines, as well as in the sale of said synthetic dry cleaning solvents, "Tri-Clene" and "Per-Clene," made by E. I. du Pont de Nemours & Co., Inc.

(4) Respondent, in the course of its business, makes contacts with various persons interested in the sale and use of synthetic solvents through its home office, its branch offices, a considerable number of dealers located in principal cities and a number of salesmen schooled in chemistry, salesmanship, and degreasing. Data of advantage to respondent in combating competition from competing solvents is secured by respondent through its contacts aforesaid, from E. I. du Pont de Nemours & Co., Inc., and said other companies interested in the sale of the solvents made by said latter company; and statements relating to such data, based thereon and in opposition thereto, are disseminated and distributed by respondent through its various contacts aforesaid.

PAR. 3. Respondent, in the sale and distribution of its synthetic degreasing solvents for use in synthetic solvent degreasing machines, is in competition with a number of corporations, partnerships and individuals that are now, and for more than 2 years last past have been, engaged in the sale and distribution of synthetic degreasing solvents for use in such machines in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors is Kolene Corp., a corporation organized and existing under and by virtue of the laws of the State of Michigan, having its principal office and place of business located in Detroit, Mich., which is now, and for more than 2 years last past has been, engaged in the sale and distribution of the synthetic degreasing solvent called "Kolene T" and the synthetic dry-cleaning solvent called "Kolene C."

PAR. 4. (1) Respondent, in the course and conduct of its business and for the purpose of inducing owners and users of respondent's synthetic solvent degreasing machines, made and sold by respondent, to pur-

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chase from respondent the synthetic degreasing solvent, consisting of trichlorethylene, sold by respondent under the name of "Blacosolv," in preference to the solvents aforesaid sold by Kolene Corp.; and, for the purpose of lessening, preventing, and destroying competition by Kolene Corp. in the sale of synthetic degreasing solvents, and of injuring, hindering, and eliminating it as a competitor in the synthetic solvent cleaning field; represents, and has represented to owners and users of synthetic solvent degreasing machines, distributors of synthetic solvents, and others interested in the sale and use of synthetic solvents, that only the solvents aforesaid made by E. I. du Pont, de Nemours & Co., Inc., should be used in the synthetic solvent degreasing machines sold by respondent, and that the solvents aforesaid sold by Kolene Corp., which are sometimes referred to by respondent as "Kolene," should not be used for synthetic solvent cleaning, either in synthetic solvent degreasing machines or in synthetic solvent dry-cleaning machines, giving various reasons therefor, among which the following are typical:

(a) Kolene has no merit as a degreasing or dry-cleaning agent because it is a mixture containing carbon tetrachloride, plus some benzol, petroleum, naphtha, or something of that kind, which are without value for degreasing or dry cleaning.

(b) Kolene, being a solvent mixture, is not a suitable or satisfactory degreasing solvent, because mixed solvents are hard, unsatisfactory and dangerous to use in synthetic solvent degreasing machines.

(c) Kolene is not to be compared with trichlorethylene sold by respondent under the name of "Blacosolv," being far inferior to it for degreasing purposes and without its proven merits.

(d) Kolene, upon being heated in the course of degreasing metals in synthetic solvent degreasing machines, will separate, break down, form acid, and react both against the metals being degreased and the degreasing machines; whereas, trichlorethylene, or "Blacosolv," is a stable solvent that is free from such faults.

(e) Kolene, if used in synthetic solvent degreasing machines, will corrode such machines and the metals being degreased.

(f) Kolene, when used in synthetic solvent degreasing machines, is more toxic, poisonous, and dangerous to life and health than trichlorethylene or "Blacosolv," the solvent sold by respondent.

(g) Kolene is dangerous to life and health, when used in synthetic solvent degreasing machines; because it contains carbon tetrachloride and also because it contains benzol; whereas, trichlorethylene, or "Blacosolv," as compared to carbon tetrachloride and benzol, is com-

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paratively harmless to life and health and not a health hazard when used in synthetic solvent degreasing machines.

(h) Kolene will catch on fire and explode if used in synthetic solvent degreasing machines because it contains benzol.

(i) Kolene is inflammable and explosive, because it contains benzine, gasoline, naphtha or one of the petroleum products called "naphtha."

(j) Kolene constitutes a fire hazard and risk, when used in synthetic solvent degreasing machines, and is more inflammable and explosive than trichlorethylene, or "Blacosolv," the solvent sold by respondent.

(k) Kolene will, in general, not flash or catch on fire up to the initial boiling point; whereas, trichlorethylene, or "Blacosolv," is not flammable or explosive, and can be used, heated, and distilled in synthetic solvent degreasing machines without risk of fire or explosion.

(l) Proof of the properties of Kolene, as given in the statements aforesaid, has been made by laboratory and other tests made by respondent and E. I. du Pont de Nemours & Co., Inc., of Wilmington, Del.

(2) The aforesaid statements, claims, representations, implications and inferences, and others of similar import and meaning, have been made, published, and caused to be made and published, by respondent, in and among and between, various States of the United States and the District of Columbia, by means of letters transmitted by United States mails and otherwise.

PAR. 5. (1) The aforesaid statements, claims, representations, implications, and inferences are exaggerated, false, misleading, and deceptive.

(2) Through and by means of said statements, claims, representations, implications, and inferences aforesaid, respondent has unfairly disparaged the products of Kolene Corp., namely, "Kolene T" and "Kolene C," sometimes referred to by respondent as "Kolene."

PAR. 6. (1) There is no basis from either a scientific or a practical standpoint for a representation that the products of Kolene Corp., namely, Kolene T and Kolene C, referred to by respondent as "Kolene," have no merit or are without value, or are not suitable, or satisfactory for degreasing or dry cleaning purposes; or that "Kolene" has been made of mixed solvents that are of no value, or that are not suitable, or satisfactory for such purposes; or that mixed solvents are hard, unsatisfactory or dangerous to use in synthetic solvent degreasing machines; or that trichlorethylene, sold by respondent under the name of "Blacosolv," is far superior to "Kolene" for degreasing purposes; or that "Kolene" is not to be compared with the solvents sold

by respondent for degreasing purposes. The truth is that Kolene T has been used successfully for degreasing purposes and that Kolene C has been used successfully for dry-cleaning purposes. Also, it is a fact that trichlorethylene, or "Blacosolv," when in contact with metals and also when in the presence of water encountered in degreasing operations in synthetic solvent degreasing machines, is subject to the same type of faults as carbon tetrachloride, and, during degreasing operations in synthetic solvent degreasing machines, must be handled the same as Kolene T, to insure satisfactory operating results, both as to the degreasing machines and the metals being degreased.

(2) There is no basis for a statement that Kolene T or Kolene C, upon being heated in the course of degreasing metals in synthetic solvent degreasing machines, will separate, break down, form acid, or react against the metals being degreased or the degreasing machines; and any inference that "Kolene" is subject to such faults and that trichlorethylene, or "Blacosolv," is a stable solvent that is free from such faults is deceptive. The truth is that Kolene T has been used in synthetic solvent degreasing machines without undue or unusual corrosive effects on such machines and without injury to, or unusual effects on, the metals being degreased.

(3) Any inference that "Kolene" is more toxic, poisonous, and dangerous to life and health than trichlorethylene, or "Blacosolv," is deceptive. The truth is that trichlorethylene, or "Blacosolv," and "Kolene" are each dangerous to life and health and if not properly handled or properly used in synthetic solvent degreasing machines will cause illness to the operators of such machines. There is no scientific or practical basis for an assertion or inference that trichlorethylene, or "Blacosolv," as compared to carbon tetrachloride or benzol, is comparatively harmless to health and not a health hazard when used in synthetic solvent degreasing machines.

(4) The truth is that "Kolene" will not catch on fire or explode when used in synthetic solvent degreasing machines. It has not been made of benzine, gasoline, naphtha, or any product made from petroleum or of any product called "naphtha." The use of Kolene T in synthetic solvent degreasing machines does not constitute a fire hazard or risk to the owners of such machines, and it is not more inflammable nor more explosive than trichlorethylene, or "Blacosolv." Any statement that "Kolene" will, in general, not flash or catch on fire up to the initial boiling point is deceptive, implies, and may induce the belief, that "Kolene" is inflammable when used for degreasing or when used under operating conditions in synthetic solvent degreasing

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machines; and statements to such effect, as used by respondent, convey the false and deceptive inference that "Kolene," if used for degreasing in synthetic solvent degreasing machines, will catch on fire and explode. The fact is that "Blacosolv" has been given a higher numerical fire hazard rating than Kolene C by Underwriters' Laboratories, Inc., a nonprofit organization for the testing of materials as to their relation to life, fire, and casualty hazards.

(5) Inferences and statements on the part of the respondent that the comparative statements made by respondent, as above set out, have been substantiated by tests made by respondent and by E. I. du Pont de Nemours & Co., Inc., are false and deceptive.

PAR. 7. (1) The aforesaid statements, claims, representations, implications, and inferences made and published by respondent as aforesaid, have been made by respondent to distributors of synthetic solvents and others interested in the sale and use of synthetic solvents. The latter have thus been placed in a position by respondent to make and publish the aforesaid statements, claims, representations, implications, and inferences.

(2) The use by respondent of the aforesaid acts and practices hereinabove mentioned in connection with the sale and distribution of synthetic degreasing solvents in commerce 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 said statements, claims, representations, implications, and inferences are true, and cause and have caused many members of the purchasing public, because of said mistaken and erroneous belief, to purchase respondent's synthetic degreasing solvents, in preference to the product Kolene T, and not to purchase the products Kolene T and Kolene C.

(3) The use by the respondent of the acts and practices, as aforesaid, also has the capacity and tendency to, and does, divert trade unfairly to respondent, and to the sellers of its solvents, from Kolene Corporation, and the sellers of the solvents of Kolene Corp.

PAR. 8. The aforesaid acts and practices of the respondent as hereinabove alleged are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and 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 January 23, 1942, issued and sub-

sequently served its complaint in this proceeding upon the respondent, G. S. Blakeslee & Co., a corporation, charging said respondent with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the respondent filed its answer to said complaint, a written stipulation was entered into by and between the respondent, by its counsel, and Daniel J. Murphy, Assistant Chief Trial Counsel of the Commission, and in this stipulation it was provided that, subject to the approval of the Commission, the statement of facts contained therein may be taken as the facts in this proceeding in lieu of all evidence, and that the Commission may proceed upon the complaint, the respondent's answer, and said statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the stipulated facts) and its conclusion based thereon, and enter its order disposing of this proceeding. In said stipulation the respondent expressly waived the filing of a trial examiner's report upon the evidence, but it did not waive the filing of briefs or the presentation of oral argument.

Thereafter, this proceeding regularly came on for final hearing upon the complaint, the respondent's answer thereto, and the stipulation as to the facts, said stipulation having been approved, accepted, and filed (the respondent having decided not to file a brief or to request oral argument and no brief having been filed or oral argument requested by counsel in support of the complaint); 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, G. S. Blakeslee & Co. (erroneously named in the complaint as G. S. Blakeslee & Co.), is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 1844 South Fifty-second Avenue, in the city of Cicero, State of Illinois.

PAR. 2. The respondent is now, and for more than 2 years last past has been, engaged in the manufacture and in the sale and distribution of synthetic solvent degreasing machines, some of which are called "Blakeslee Degreasers," used in solvent degreasing, being the cleaning of oil and grease from metal products, and in the sale and distribution

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of synthetic degreasing solvents, consisting of trichlorethylene, sold by the respondent under the name of "Blacosolv." The respondent is now causing, and has caused, said synthetic degreasing solvents, when sold, to be transported from places located in various States of the United States to purchasers thereof 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 in said synthetic degreasing solvents, in commerce among and between the various States of the United States and in the District of Columbia.

In the United States, all except a limited number of synthetic solvent degreasing machines have been, and are now, made and sold by two companies, namely, the respondent and Detroit Rex Products Co. (also known as Detrex Corp.), of Detroit, Michigan. These two companies and E. I. du Pont de Nemours & Co., Inc. (hereinafter referred to as "du Pont") are parties to a number of agreements and arrangements covering the manufacture of synthetic solvent degreasing machines and the distribution of synthetic degreasing solvents made by du Pont. In 1939 there were three other companies making said machines, and now there are four additional ones. Detroit Rex Products Co. sells and distributes synthetic degreasing solvents, consisting of trichlorethylene, under the name of "Triad" and "Perm-A-Clor," and, prior to January 1, 1947, all of such solvents sold by this company were made by du Pont. Prior to January 1, 1947, all of the solvents sold by the respondent under the name of "Blacosolv" were also made by du Pont. Under the arrangements aforesaid the respondent and Detroit Rex Products Co. have handled a large part of the distribution of du Pont's degreasing solvents. Du Pont also sells trichlorethylene under the name of "Triclene D" (formerly sold under the name of "Cecolene No. 1"), and perchlorethylene under the name of "Per-Clene" (formerly sold under the name of "Cecolene No. 2"), for use in synthetic solvent degreasing machines.

In order to handle the sale and distribution of its synthetic degreasing solvents, the respondent maintains a solvent sales office in Cicero, Ill., and also maintains branch offices in New York and other cities. It has its salesmen and technical servicemen call upon jobbers, distributors, and users of degreasing equipment in the interest of the sale and distribution of its synthetic solvents, and these salesmen and technical servicemen often make calls on users of degreasing equipment in the company of salesmen employed by the jobbers and distributors. They sometimes carry with them equipment for testing

degreasing solvents, and are given instructions by the respondent's main office and its branch offices on competitive products and the manner in which to deal with problems met in the field.

PAR. 3. In the sale and distribution of its synthetic degreasing solvents for use in synthetic solvent degreasing machines the respondent, since prior to 1938, has been and is now in competition with a limited number of other producers of synthetic degreasing solvents. One of said competitors has been, and is, Kolene Corp. (also known as Kolene, Inc.), a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business located in Detroit, Mich. This corporation entered the solvent degreasing field in 1938, at which time it began to produce and sell a synthetic degreasing solvent called "Kolene T." It continued to sell said degreasing solvent under this name until 1939. Since September 1939, this product has been sold by the Kolene Corp., and is now sold by said corporation, under the name of "Kolyte."

Prior to the time the Kolene Corp. entered the degreasing field, almost all solvent degreasing was done with trichlorethylene and the solvent made therefrom.

PAR. 4. Prior to December 1939, the product "Kolene T" was made of carbon tetrachloride, trichlorethylene, and benzol (benzol being a product made by the fractional distillation of coal). In December 1939, the ingredients of this degreasing solvent, then sold under the name of "Kolyte," were changed to trichlorethylene, perchlorethylene, and benzol. In August 1940, this solvent was further changed for certain customers by replacing the benzol with toluol (toluol being a petroleum product), but Kolene Corp. continued to make said solvent with benzol instead of toluol for certain customers. So far as its use for degreasing is concerned, the properties of "Kolyte" are the same as those described herein for "Kolene T."

PAR. 5. In promoting the sale and distribution of its synthetic degreasing solvents, the respondent, during the period from 1938 to the date of the complaint in this proceeding (January 23, 1942), made a number of claims, statements, and representations to owners and users of synthetic degreasing machines, manufacturers of such machines, and distributors and others interested in the sale and use of synthetic solvents, to the effect that only the solvents named above made by du Pont should be used in synthetic solvent degreasing machines sold by the respondent, and that the degreasing solvents sold by Kolene Corp., which were sometimes referred to by the respondent as "Kolene," should not be used for synthetic solvent cleaning in solvent degreasing machines. In support of these statements and representations, the

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respondent gave various reasons therefor, among which were the following:

(a) that "Kolene" has no merit as a degreasing agent because it is a mixture containing carbon tetrachloride, plus some benzol, petroleum, naphtha, or something of that kind, which are without value for degreasing;

(b) that "Kolene," being a solvent mixture, is not a suitable or satisfactory degreasing solvent, because mixed solvents are hard, unsatisfactory and dangerous to use in synthetic solvent degreasing machines;

(c) that "Kolene" is not to be compared with trichlorethylene sold by the respondent under the name of "Blacosolv," being far inferior to it for degreasing purposes and without its proven merits;

(d) that "Kolene," upon being heated, as synthetic solvents are heated in the course of degreasing in synthetic solvent degreasing machines, will separate, break down, form acid, and react against and corrode both the metals being degreased and the degreasing machines; whereas, trichlorethylene and "Blacosolv" are stable solvents that are free from such faults;

(e) that "Kolene" is more toxic, poisonous, and dangerous to life and health than trichlorethylene or "Blacosolv";

(f) that "Kolene" is dangerous to life and health because it contains carbon tetrachloride and also because it contains benzol; whereas, trichlorethylene and "Blacosolv," as compared to carbon tetrachloride and benzol, are comparatively harmless to life and health and are not a health hazard when used in synthetic solvent degreasing machines;

(g) that "Kolene" will catch on fire and explode if used in synthetic solvent degreasing machines because it contains benzol;

(h) that "Kolene" is inflammable and explosive because it contains benzine, gasoline, naphtha or one of the petroleum products called "naphtha";

(i) that "Kolene constitutes a fire hazard and risk when used in synthetic solvent degreasing machines, and is more inflammable and explosive than trichlorethylene or "Blacosolv";

(j) that "Kolene" will, in general, not flash or catch on fire up to the initial boiling point; whereas, trichlorethylene and "Blacosolv" are not flammable or explosive, and can be used, heated and distilled in synthetic solvent degreasing machines without risk of fire or explosion; and

(k) that proof of the above-mentioned properties of "Kolene" has been made by the respondent and E. I. du Pont de Nemours & Co., Inc.

The means employed by the respondent and the manner in which these representations have been made are illustrated and typified by the following statements, which were contained in a series of communications from the respondent to Spradlin Mfg. & Sales Co., at Detroit, Mich., one of the respondent's distributors:

Although we have written du Pont, we do not have final report on this solvent, Kolene, as yet, but we understand that it has a benzol base which is not suitable for degreasing.

(Letter dated March 23, 1939)

Relative to Kolene, I understand that this is quite inflammable but there is a lot more of that solvent being sold in the city of Detroit than you have any idea.

(Letter dated April 3, 1939)

I have checked up on Kolene and I understand that it originally comes from Ecclestone Chemical Co. It contains about 75% Carbon Tetrachloride and 25% Benzol.

First of all, anybody knows that carbon tetrachloride is much more toxic than is Tri and Benzol is even worse than carbon tetrachloride. Therefore, instead of having a better toxicity condition with Kolene as against Tri, you have a worse proposition.

Then you have a considerable fire hazard in Benzol, and the fire rating of Benzol and carbon tetrachloride should be even greater than Tri. You may find some naphtha in the Kolene solvent too, I understand.

We do not have the definite chemical analysis, but this is the rough analysis of what they have been putting out in Kolene in the past few months. I think this ought to be enough information for you to be able to convey on to Herron Zimmers for the time being.

Definitely, Kolene is more toxic, has a fire hazard, and shows cumulative poisoning build-up in the system, rather than 50% less toxic, as it ought to be 50% greater. It is absolutely not as stable as Tri as you will definitely get hydrolysis with carbon tetrachloride which will react with your machine and the parts you are cleaning as well.

Kolene will not stand a ghost of a chance with Tri.

(Letter dated April 4, 1939)

We have received a wired report on Kolene from du Pont stating that this is made of

80% Carbon Tetrachloride

18% Benzol

2% Stoddard Solvent

Upon checking the Stoddard Solvent we find this is made up of 50% carbon tetrachloride and 50% gasoline naphtha or kerosene. This is generally used as a cleaning compound by dry cleaners.

From this information you will see that Kolene is not to be compared with Trichlorethylene either from a fire hazard or toxicity standpoint as it certainly is more inflammable and is more dangerous from a health standpoint.

(Letter dated April 5, 1939)

In other words we know it (Kolene) contains mostly carbon tetrachloride and some benzol, petroleum, naphtha, or something of that kind. Anyway, a good chemist will deduce that they have greater toxicity than that for Trichlorethylene. You also have a more inflammable solvent. We hope you can convey this information on to Commonwealth Brass as well.

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You are going to run into trouble when you use mixed solvents, that is a cinch. Petroleum, naphtha, and benzol are terrible to work with.

(Letter dated April 10, 1939)

These statements, claims, representations, and inferences, and others similar thereto, were made by the respondent to distributors of synthetic solvents and others interested in the sale of such products, and the respondent thus placed in the hands of such distributors, and others, the means of passing on to purchasers the information so provided. The record shows that such information was actually used by such distributors and others in whose hands it was placed as a means of persuading users of degreasing solvents not to use "Kolene T."

PAR. 6. (a) There is no basis from either a scientific or a practical standpoint for a representation or inference that the product of Kolene Corp., namely "Kolene T," which the respondent referred to as "Kolene," has no merit as a degreasing agent or that it will be found to be unsatisfactory for degreasing purposes; or that mixed solvents are hard, unsatisfactory or dangerous to use in synthetic solvent degreasing machines; or that "Kolene T" is not to be compared with trichlorethylene sold by the respondent under the name of "Blacosolv" because it is far inferior to it for degreasing purposes and is without its proven merits.

(b) There is no scientific or practical basis for a statement that "Kolene T," upon being heated as synthetic solvents are heated in the course of degreasing, will separate, break-down, form acid or react unfavorably against or corrode the metals being degreased or the degreasing machines; and any statement or inference that "Kolene T" is subject to such faults and that trichlorethylene and "Blacosolv" are stable solvents that are free from such faults is deceptive.

(c) Any statement or inference that "Kolene T" is more toxic, poisonous and dangerous to life and health than du Pont's solvent trichlorethylene or the respondent's solvent "Blacosolv" is deceptive. There is no scientific or practical basis for an assertion or inference that either trichlorethylene or "Blacosolv" as compared with carbon tetrachloride or benzol is comparatively harmless to life and is not a health hazard when used in synthetic solvent degreasing machines.

(d) There is no scientific or practical basis for an assertion or inference that "Kolene T" will catch on fire and explode if used in synthetic solvent degreasing machines because it contains benzol, or that when thus used it constitutes a fire hazard and risk and is inflammable.

(e) Any statement that "Kolene T" will not flash or catch on fire up to the initial boiling point is deceptive and implies and may induce

the belief that "Kolene T" is inflammable when used for degreasing or when used under operating conditions in synthetic solvent degreasing machines; and statements to such effect, as used by the respondent, convey the false and deceptive impression that "Kolene T," when used for degreasing in synthetic solvent machines, will catch on fire and explode.

(f) Proof of the properties of "Kolene T," as they were represented to be by the respondent in the manner above stated, had not been made by laboratory or other tests made by the respondent, or others, prior to the making of the representations referred to, except as indicated herein. The actual properties of said solvent are covered herein by paragraphs 4, 6, and 7.

PAR. 7. At the time the representations referred to in paragraph 5 were made, du Pont had in fact procured samples of the synthetic solvents of the Kolene Corp. and had had these samples analyzed in its laboratories and had furnished the respondent with a number of reports of such analyses. Du Pont had not, however, by its analyses or otherwise, determined the true composition of the product "Kolene T," and neither it nor the respondent was in a position to represent to the trade just what the components or the characteristics or properties of said product were.

The record shows that "Kolene T" has been used successfully for degreasing purposes. Said solvent, when used for such purposes, has given, and does give, satisfactory results without undue or unusual harmful effects on either the metals being degreased or the degreasing machines.

The solvents, trichlorethylene and "Blacosolv," made by du Pont, when in contact with metals and also when in the presence of water encountered in degreasing operations in synthetic solvent degreasing machines, are subject to the same type of faults as carbon tetrachloride. During working operations in synthetic solvent degreasing machines, these solvents must be handled the same as "Kolene T," the product of Kolene Corp., to insure satisfactory operating results both as to the machines being thus used and the materials being thus degreased.

All of the products mentioned herein as having been used for degreasing purposes are to some extent poisonous and toxic and, if allowed to come in contact with the skin, or if the vapors of such products are inhaled, are dangerous to life and health. If not properly handled or properly used in synthetic solvent degreasing machines, all of said solvents will cause illness to the operators of such machines. Such dangers are increased by continued and repeated contacts with

said solvents. Hence, it is deceptive and disparaging for the respondent to refer to "Kolene T" as more toxic, poisonous, or more dangerous than the other named solvents; and in this connection, the nature of the impairment to health resulting from contacts with such solvents is immaterial and reference thereto in the circumstances is deceptive and disparaging. In scientific circles, distinctions as to the safety or dangerous character of said solvents may be justified, but in the commercial world broad distinctions as to the relative safety or dangerous character of said solvents are not justified, and if made in connection with the sale of such solvents constitute unfair, false, and deceptive acts and practices and an unfair, false, and misleading method of competition.

"Kolene T" will not catch on fire or explode when used in synthetic solvent degreasing machines. The use of this product in synthetic solvent degreasing machines under standard or usual conditions does not constitute a fire hazard or risk to the owners and users of such machines, and when thus used it is not inflammable. Such solvent is not more inflammable, nor more explosive, when used for such purpose, than "Blacosolv," trichlorethylene, or perchlorethylene or the solvents made therefrom as the latter are made by du Pont. Contrary to the respondent's representations "Kolene T" was never made with "benzine" or "petroleum naphtha," which would have made it more inflammable. The component "benzol," which was actually contained in said product, is not a petroleum derivative, and the fire hazard of the preparation "Kolene T" was reported by Underwriters Laboratories, Inc. (an enterprise sponsored by the National Bureau of Fire Underwriters operated for service and not for profit), to be "very small." In the report referred to the rating given "Kolene T" as to flammability was the same as the rating given both trichlorethylene and "Blacosolv."

PAR. 8. The false, misleading, and disparaging representations made by the respondent to the effects and in the manner aforesaid have had a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations are true and into the purchase of the respondent's product in preference to the product "Kolene T." Because of such erroneous belief, said false and misleading representations and disparagements also have the tendency and capacity unfairly to divert trade from the sellers of the preparation "Kolene T" to the respondent and to the sellers of the respondent's products.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of the respondent's competitors and constitute unfair methods of competition in commerce and 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 respondent's answer thereto, a stipulation as to the facts entered into by and between the respondent, by its counsel, and Daniel J. Murphy, Assistant Chief Trial Counsel of the Commission, which stipulation provided, among other things, that without further evidence or other intervening procedure except the filing of briefs and the presentation of oral argument (the filing of briefs and the presentation of oral argument having been subsequently waived), the Commission may issue and serve upon the respondent its findings as to the facts and conclusion based thereon and an order disposing of the proceeding; and the Commission having made its findings as to facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered that the respondent, G. S. Blakeslee & Co., 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 its synthetic degreasing solvents, do forthwith cease and desist from:

(1) Misrepresenting in any manner the constituents, properties, or characteristics of "Kolene T," or of any other degreasing solvent sold in competition with the respondent's product;

(2) Representing, directly or by implication, that "Kolene T" has no merit or value or that it is not suitable or satisfactory as a degreasing agent;

(3) Representing, directly or by implication, that "Kolene T," when used in synthetic solvent degreasing machines will separate, break down or form acid, or that it will react unfavorably against or corrode the metals being degreased or the machines in which such solvent is used;

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(4) Representing, directly or by implication, that the toxicity of or dangers from the fumes of "Kolene T" are greater than the toxicity of or dangers from the fumes of the respondent's degreasing solvent; or misrepresenting in any manner the absolute or comparative toxicity of or dangers from the fumes of "Kolene T" or any other competing degreasing solvent;

(5) Representing, directly or by implication, that the hazards of fire or explosion from the use of "Kolene T" are greater than the hazards of fire or explosion from the use of the respondent's degreasing solvent; or representing, directly or by implication, that "Kolene T" is inflammable or explosive when used for degreasing purposes under standard or usual conditions for such work;

(6) Making or publishing any false or disparaging representations concerning the degreasing solvent of any competitor; or supplying to or placing in the hands of distributors or others any statement, claim, report or data which may be used by such distributors or others as a means of or basis for any false or disparaging representation concerning the degreasing solvent of any competitor.

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

E. I. DU PONT DE NEMOURS & COMPANY, INC.

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

Docket 4685. Complaint, Jan. 28, 1942—Decision, Dec. 30, 1948

As respects the question as to whether or not two particular solvents used in synthetic solvent dry-cleaning and degreasing machines, may be properly characterized as more toxic, poisonous, or dangerous than certain others thus used, it appearing that all are poisonous and toxic to some extent and, if allowed to come in contact with the skin, or if the vapors thereof are inhaled, are dangerous to life and health, and, furthermore, that all, if hot properly handled or used in such machines, will cause illness to the operators—dangers which are increased by repeated contacts therewith: it is deceptive and disparaging for the seller of certain of the other solvents competitive therewith to refer to said particular solvents as more toxic, poisonous, and dangerous than the others.

In such a connection the nature of the impairment to health which results from contacts with such particular solvents is immaterial and reference thereto is deceptive and disparaging; and, while in scientific circles distinctions as to the safety or dangerous character of such particular solvents may be justified, in the commercial world broad distinctions as to the relative safety or dangerous character thereof are not justified, and, in connection with the sale thereof, constitute false and deceptive acts and practices and an unfair, false, and misleading method of competition.

Where a corporation engaged in the manufacture of synthetic dry-cleaning and degreasing solvents which consisted of chloronated hydrocarbon solvents, trichlorethylene and perchlorethylene; and in the interstate sale and distribution of the two last referred to, under the names "Tri-Clene," and "Perclene," respectively, for use in synthetic solvent dry-cleaning machines, through a number of authorized distributors and jobbers of chemicals, and through the Columbia Appliance Corp., maker also of such machines; and of its synthetic degreasing solvents for use in synthetic solvent degreasing machines through two companies, manufacturers of most of such machines (namely, the Detroit Rex Products Co., and the G. S. Blakesley Co. of Cicero, Ill.), who sold and distributed its said trichlorethylene solvents under the names of "Tri-Ad" and "Permachlor" in the case of the former, and "Blacosolv" in the case of the latter;

In promoting the sale and distribution of its said synthetic solvents through salesmen and technical servicemen who called upon jobbers, distributors, dry cleaners and users of degreasing equipment—often in the company of salesmen employed by the jobbers and distributors, were instructed by the main office on competitive products and the manner in which to deal with problems met in the field, and sometimes carried with them equipment for testing synthetic solvents, which included (1) carbon tetrachloride