

Syllabus

IN THE MATTER OF

SAUL FEHLDEN TRADING AS FEDERAL CHEMICAL
MANUFACTURING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5627. Complaint, Dec. 15, 1948—Decision, Mar. 21, 1949*

When a product is designated or advertised as an "antifreeze" preparation, a substantial portion of the public associates it with those long-used and dependable "antifreeze" solutions designed to protect gasoline engines from damage that might be caused by freezing of the content of the cooling systems, which have proven effective without resulting in damage to the cooling systems or to the engines, and believes not only that a preparation thus designated will prevent freezing, but may be used without harm to the engines or to the cooling system.

Liquid solutions with a calcium chloride base, designed and used as antifreeze solutions have highly injurious effects on the component parts of the cooling and ignition systems of gasoline engines, and will seriously corrode the cylinder block, water pump, radiator and especially any aluminum parts such as cylinder heads, thereby causing partial or complete stoppage of water passages in the radiator, with consequent overheating. Such solutions also have a great tendency to "creep" and may get into engine cylinders, in which event they may cause serious damage or may even completely ruin the engines.

Where an individual engaged in the interstate sale and distribution of a so-called antifreeze preparation with a calcium chloride base; designated as "Polar Zone," and recommended for use in the cooling systems of gasoline engines;

- (a) Falsely represented that his said product would prevent freezing in the cooling system without harm to engines, radiators, or hose connections; would prevent rust and corrosion in any part of the engines and in the cooling systems; and would not clog the passages of the latter; and
- (b) Represented through use of the term "antifreeze" to designate and describe his said product, that it was an effective antifreeze preparation;

With effect of misleading and deceiving a substantial portion of the purchasing public with respect to the nature, value, effectiveness, and safety of the product, and with tendency and capacity so to do, and thereby cause such public to purchase substantial quantities of the product:

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

Before *Mr. Henry P. Alden*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Joseph Kolodny, of Baltimore, Md., 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 Saul Fehlden, an individual trading as Federal Chemical Manufacturing Co., 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, Saul Fehlden, is an individual trading as Federal Chemical Manufacturing Co., whose office and principal place of business is located at 708 West North Avenue, Baltimore, Md., and whose manufacturing plant is located at 1719 Lamont Avenue, Baltimore, Md.

PAR. 2. The respondent is now and for several months last past has been engaged in the sale and distribution of a solution called "Polar Zone," intended to protect gasoline engines from damage that might be caused by the freezing of the contents of the cooling systems of such engines during cold weather.

In the course and conduct of such business, respondent causes his said product, when sold, to be transported from his place of business in the State of Maryland 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 product in commerce among and between the various States of the United States and the District of Columbia. His volume of business in such commerce is substantial.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said product in commerce, the respondent, subsequent to March 21, 1938, has made and is now making certain false, deceptive, and misleading representations regarding the value of his said product and the results to be obtained from its use, by means of labels attached to the containers in which said product is shipped and by various other means. Typical representations on the labels affixed to the containers of the product are as follows:

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POLAR
ZONE

(Pictorial representation of two walruses and ice)

ANTI-FREEZE
PERMANENT TYPE
WILL NOT BOIL AWAY
PREVENTS RUST AND CORROSIONPOLAR ZONE
PERMANENT
ANTI-FREEZE

Made with Ethylene Glycol

Contains no glycerin
ethanol or methanol
(denatured or wood alcohol)NON-INFLAMMABLE
NON-VOLATILE
NO UNPLEASANT
ODORSGUARANTEEIF USED ACCORDING TO INSTRUCTIONS
ON CAN, POLAR ZONE ANTI-FREEZE IS
GUARANTEED:To protect the cooling system
from freezing.To be harmless to the engine,
radiator, hoses and finish of your car.

To prevent further rust or corrosion.

Not to evaporate or burn.

Not to clog passages.

TO BE AS HARMLESS AS
WATER IN ANY SYSTEM.POLAR ZONE
PERMANENT
ANTI-FREEZE

ONE FILLING LASTS ALL WINTER

CAUTION: DO NOT DRINK

DO NOT USE THIS CAN FOR FOOD OR BEVERAGES

The cooling system of your car should be leak-proof, and in normal operating condition before adding antifreeze. Be sure all hose connections are tight.

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PAR. 4. Through the use of the statements and representations above set forth and others similar thereto not specifically set out herein, respondent has represented directly and by implication that his product "Polar Zone" prevents freezing in the cooling systems of gasoline engines without harm to the engine, radiator, or hose connection; that it will prevent rust or corrosion in any part of the engine or cooling system and will not clog the passages of the cooling system.

PAR. 5. The foregoing representations are false, deceptive, and misleading. Respondent's product is not harmless to gasoline engines or the cooling systems thereof. It will not prevent rust or corrosion and it will clog the passages of the cooling system. In truth and in fact respondent's product is a liquid solution having a calcium chloride base. Such liquid solutions have highly injurious effects on the component parts of the cooling and ignition systems of gasoline engines and will cause serious corrosion of the cylinder block, water pump, radiator, and especially of any aluminum parts, such as cylinder heads. The corrosion products resulting from the use of such solutions will cause partial or complete stoppage of water passages in the radiator with consequent overheating. Also, such solutions have a great tendency to "creep" and may get into the engine cylinders where they will cause serious damage or even completely ruin the engine.

PAR. 6. For many years there have been on the market and sold to the purchasing public throughout the United States, solutions which protect gasoline engines from damage that might be caused by the freezing of the contents of the cooling systems of such engines during cold weather. These solutions are generally known as "Anti-Freeze" and have proven dependable in protecting the engines from the effect of cold without causing any other damage. Respondent's representation that his product is an "antifreeze," is itself misleading. When such a product is so represented, a substantial portion of the purchasing public believes that it may be used without harm to the engine or cooling system thereof.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading representations has the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and induces and has induced members of the public to purchase substantial quantities of respondent's product as a result of such belief.

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

deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 15, 1948, issued and subsequently served its complaint in this proceeding upon the respondent, Saul Fehlden, an individual trading as Federal Chemical Manufacturing Co., charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On January 11, 1949, the respondent filed his answer to the complaint in which he admitted in part and denied in part the allegations thereof. On February 23, 1949, said respondent filed with the Commission a motion for permission to withdraw the aforesaid answer and in lieu thereof to substitute an answer, dated February 21, 1949, in which he admitted all of the material allegations of fact set forth in the complaint and waived all intervening procedure and further hearings as to said facts, and this motion was subsequently allowed and the substitute answer was received.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint and said substitute answer; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that the 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, Saul Fehlden, is an individual trading as Federal Chemical Manufacturing Co., with his office and principal place of business located at 708 West North Avenue, and his manufacturing plant located at 1719 Lamont Avenue, both in the city of Baltimore, State of Maryland.

PAR. 2. The respondent is now, and for several months last past has been, engaged in the sale of a so-called antifreeze preparation designated by him as "Polar Zone," recommended for use in the cooling systems of gasoline engines. The respondent causes this product, when sold, to be transported from his place of business in the State of Maryland to purchasers thereof located in various other States of the United States and in the District of Columbia, and at all times mentioned herein he 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. The respondent's volume of business in this product is substantial.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the purchase of said product in commerce, the respondent, since March 21, 1938, has made, and is now making, a number of advertising representations concerning the value of said product and the results to be obtained from its use. Said representations have been and are now being made on labels attached to the containers in which the product is shipped, and by various other means. Typical of the statements containing such representations made on the labels affixed to the containers of the product are the following:

POLAR
ZONE

(Pictorial representation of two walruses on ice)

ANTI-FREEZE
PERMANENT TYPE
WILL NOT BOIL AWAY
PREVENTS RUST AND CORROSION

POLAR ZONE
PERMANENT
ANTI-FREEZE

Made with Ethylene Glycol

Contains no glycerin
ethanol or methanol
(denatured or wood alcohol)

NON-INFLAMMABLE
NON-VOLATILE
NO UNPLEASANT
ODORS

GUARANTEE

IF USED ACCORDING TO INSTRUCTIONS)
ON CAN, POLAR ZONE ANTI-FREEZE IS
GUARANTEED:

To protect the cooling system
from freezing.

To be harmless to the engine,
radiator, hoses and finish of
your car.

To prevent further rust or corrosion.

Not to evaporate or burn.

Not to clog passages.

TO BE AS HARMLESS AS
WATER IN ANY SYSTEM.

POLAR ZONE
PERMANENT
ANTI-FREEZE

ONE FILLING LASTS ALL WINTER

CAUTION: DO NOT DRINK

DO NOT USE THIS CAN FOR FOOD
OR BEVERAGES

The cooling system of your car should be leak-proof, and in normal operating condition before adding anti-freeze. Be sure all hose connections are tight.

PAR. 4. Through the use of these statements and representations, and others similar thereto, the respondent has represented, and now represents, directly or by implication, that his product "Polar Zone" prevents freezing in the cooling systems of gasoline engines without harm to such engines to the radiators or hose connections; that it will prevent rust and corrosion in any part of the engines and in the cooling systems; and that it will not clog the passages of the cooling systems.

PAR. 5. The respondent's product is a liquid solution having a calcium chloride base. Such liquid solutions have highly injurious effects on the component parts of the cooling and ignition systems of gasoline engines, and will cause serious corrosion of the cylinder block, water pump, radiator, and especially of any aluminum parts, such as cylinder heads. The corrosion resulting from the use of such solutions will cause partial or complete stoppage of water passages in the radiators with the consequent overheating of the engines. Such solutions also have a great tendency to "creep" and may get into engine cylinders, in which event they cause serious damage or may even completely ruin the engines.

The Commission therefore finds that the representations made by the respondent concerning the value of his product and the results to be obtained from its use were and are false, erroneous, and misleading. The product will not prevent freezing in the cooling systems of gasoline engines without harm to such engines and to the radiators and hose connections. It will not prevent rust or corrosion in the engines or cooling systems, but, on the contrary, will actually cause corrosion of many of the parts; and, as set forth above, the corrosion caused by

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the product will clog the passages of the cooling systems of the engines in which it is used.

PAR. 6. For many years there have been on the market and sold to the public throughout the United States certain preparations generally known as "antifreeze" solutions which are designed to protect gasoline engines from damage that might be caused by freezing of the contents of the cooling systems of such engines. These preparations have proven effective and dependable for that purpose, and their use does not result in damage to the cooling systems or to the engines in which they are used. When a product is designated or advertised as an "antifreeze" preparation, a substantial portion of the public associates it with these long-used, dependable products and believes not only that it will prevent the contents of the cooling systems of gasoline engines from freezing but also that it may be used without harm to the engines or to the cooling systems thereof. The Commission therefore finds that the respondent's use of the term "Anti-Freeze" to designate and describe his product was and is itself misleading.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading representations, including the use of the term "Anti-Freeze," as aforesaid, has had, and still has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public with respect to the nature, value, effectiveness, and safety of the respondent's product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of said product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the respondent's substitute answer thereto, in which answer he admitted all of the material allegations of fact set forth in said complaint and 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

the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Saul Fehlden, individually and trading as Federal Chemical Manufacturing Co., or trading under any other name, and his 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 "Polar Zone," or any other product of substantially similar composition or properties, do forthwith cease and desist from:

1. Using the term "Anti-Freeze," or any other term of similar import, to designate, describe, or refer to said product; or otherwise representing, directly or by implication, that said product is an effective antifreeze preparation.

2. Representing, directly or by implication, that said product is safe or dependable for use in gasoline engines.

3. Representing, directly or by implication, that said product will not cause harm or damage to gasoline engines or to the cooling systems, radiators, or hose connections of such engines.

4. Representing, directly or by implication, that said product will protect gasoline engines or the cooling systems thereof against rust or corrosion.

5. Representing, directly or by implication, that said product will not clog the passages in the cooling systems of gasoline engines.

It is further ordered, That the respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

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IN THE MATTER OF
ADOLFO ENRIQUE BESOSACOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5590. Complaint, Oct. 1, 1948—Decision Mar. 22, 1949*

Where an individual engaged in the sale and distribution to purchasers in other States and in Central and South America, of a medicinal preparation designed as "Becker's Pills" and "Pastillas de Becker" which he offered to aid in counteracting the consequences of excessive use of liquor; through advertisements in Spanish in certain San Antonio and Los Angeles papers, and otherwise—

- (a) Falsely represented that said product, used as directed, would counteract or beneficially affect damage to the kidneys resulting from the excessive use of alcohol; restore the normal function of the kidneys and bladder and stimulate said organs in a natural manner; and would relieve and correct conditions such as swollen ankles, pains in the regions of the back and waist, burning sensations in the urethra and scanty and too frequent urination; and that use thereof constituted a competent and effective treatment for every disease or disorder of the kidneys or bladder; and
- (b) Failed to reveal facts which were material in the light of such representations or with respect to the consequences which might result from the use of his said product under prescribed or usual conditions in that the juniper oil contained therein would irritate normal kidneys and use thereof should never be undertaken when the kidneys are diseased in view of the serious injury which may result; use of digitalis and squill, which act as powerful heart stimulants and tend to accumulate in the body, may lead to serious injury to the heart and circulatory system; and said drugs in the amount supplied by such product, taken as directed, should only be used at the discretion and under the supervision of a qualified physician;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true, and that use of said preparation was safe and harmless, and with tendency and capacity so to do, and to induce said public by reason of said erroneous beliefs to purchase substantial quantities of his said product:

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. Charles S. Cox for the Commission.

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