

Order
IN THE MATTER OF
BANNER MANUFACTURING CO.

ORDER MODIFYING ORDER TO CEASE AND DESIST ISSUED JAN. 31, 1938¹

Docket 3067. Order, July 13, 1949

Order modifying prior cease and desist order in proceeding in question, 26 F. T. C. 614, so as to eliminate from paragraph 1 of said order, for the reasons below set forth, proviso permitting, subject to the conditions therein stated, the representation by respondent, otherwise prohibited, that its antifreeze preparations are safe and harmless for general use in automobile radiators.

Before *Mr. Webster Ballinger*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Jacob E. Hurwitz, of New York City, for respondent.

ORDER MODIFYING ORDER TO CEASE AND DESIST ISSUED JANUARY 31, 1938

This cause coming on to be heard by the Commission upon motion of Richard P. Whiteley, assistant chief counsel, to amend order to cease and desist issued in this proceeding on January 31, 1938; respondent's statement in opposition to said motion; testimony and other evidence on the question of public interest taken before Webster Ballinger, a trial examiner of the Commission; recommended decision

¹ Said cease and desist order reads as follows:

"This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answer thereto filed herein on December 28, 1937, by respondent admitting all the material allegations of the amended complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes';

"*It is ordered*, That the respondent, Banner Manufacturing Co., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of antifreeze preparations for use in automobile radiators in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

"(1) Representing that said preparations are safe and harmless solutions for general use in automobile radiators: *Provided, however*, Respondent is not prohibited from representing that said products, as now composed, when used under the suggested directions of respondent as to proper quantities thereof for designated temperatures, are effective as antifreeze solutions.

"(2) Representing, through the use of the word 'manufacturing' or any other word or term of similar import and meaning in its corporate name, or in any other manner, or through any means or device, that it is the manufacturer of said antifreeze preparations or that said preparations are made in its laboratories under its strict supervision unless and until it actually owns and operates or directly and absolutely controls a factory or manufacturing plant wherein such preparations are made by it under such supervision.

"*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."

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of said trial examiner filed March 2, 1948; exceptions to said recommended decision filed by the respondent, and brief of counsel in support of motion to amend order to cease and desist; and

It appearing to the Commission that it is the public understanding that an effective antifreeze is a preparation which prevents freezing in the radiators and motors of automobiles and is such a substance which will not cause damage to radiators, engines, motors, or other parts of automobiles when used; and

It further appearing that the representation that respondent's products, when used under the suggested directions of the respondent as to proper quantities thereof for designated temperatures, are "effective as antifreeze solutions" conveys the meaning to the public that said products are safe and harmless solutions for general use in automobile radiators; and

It further appearing that the respondent, by its answer in this proceeding, admitted that its preparations are not safe antifreeze preparations for general use from the standpoint of corrosion, as they will cause corrosion in the cooling system in which they are continually used which will in many instances lessen the effectiveness of the cooling system and cause the engine to overheat and cause corrosion on spark plugs, ignition wires, and other metal parts of the automobile with which such products come in contact, in many instances causing shorts in the ignition system; and

The Commission being of the opinion that the proviso contained in paragraph 1 of the order is contrary to fact and contrary to the admissions in the pleadings, and the Commission being further of the opinion that the public interest requires that the order to cease and desist be modified to conform with the facts and the record herein:

It is ordered, That the order to cease and desist heretofore issued on January 31, 1938, be, and the same hereby is, modified by striking from paragraph 1 thereof the following proviso: "*Provided, however*, Respondent is not prohibited from representing that said products, as now composed, when used under the suggested directions of respondent as to proper quantities thereof for designated temperatures, are effective as antifreeze solutions."

Syllabus

IN THE MATTER OF

BANNER MANUFACTURING CO., INC., TRADING AS GOLD
SEAL MANUFACTURING CO. AND NATIONAL LABORA-
TORIES CO.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5123. Complaint, Jan. 31, 1944—Decision, July 13, 1949*

Solutions known as antifreezes have long been sold to the general public throughout the United States to prevent injury to engines from the freezing of the water used in the cooling systems, and have proven dependable for such purpose and from the standpoint of not damaging the engine or vehicle concerned; and when a product is advertised as an antifreeze the public believes that it possesses the attributes found in such long used dependable products, may be used with safety in such cooling systems, will not cause rust, corrosion, clogging, or other deterioration or injury, and will protect the cooling system and other parts of the engine.

Calcium chloride when used in amounts sufficient to give protection against freezing in solutions intended for use in the cooling systems of automotive and other combustion engines will cause damage to the aluminum parts of the engine; will gradually cause damage to certain iron parts, such as pump and propeller shafts; will cause leakage in the radiator and tend to fill it with corrosion deposits to the extent that the engine will not longer cool; and tends to form deposits on ignition wires, with the result, under certain conditions, of causing short circuits. And while sodium chromate and oil are sometimes used to suppress or eliminate corrosion by the basic constituents of the antifreeze, under conditions of ordinary use of an automobile, sodium chromate, whether used alone or with oil in engines will not serve to eliminate or retard corrosion caused by calcium chloride as a basic ingredient.

Where a corporation engaged in the manufacture of various so-called antifreeze solutions containing calcium chloride, including its Gold Seal and Zero Flo preparations, recommended for use in the cooling systems of automotive and other combustion engines, and in the interstate sale and distribution of such products to automotive supply houses and garages for resale to the consuming public—

Falsely represented through use of the term "antifreeze" upon the labels attached to the containers of its products, that such preparations would protect the cooling system of automobiles and other internal combustion engines against damage from low temperatures without injury;

With effect, through such use of the term "antifreeze" and without informing the general public of the damaging effects which might result from the calcium chloride content of such products, of misleading a substantial portion of the purchasing public into the erroneous belief that the products were safe and dependable for use in guarding against damage from low temperatures without injury to the engines; and of thereby inducing such purchase