

Complaint

46 F. T. C.

IN THE MATTER OF

AUTONATOR LABORATORIES CO. AND HARRY ABELSON

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

Docket 5638. Complaint, Feb. 11, 1949—Decision, Dec. 6, 1949

Where a corporation and its president, who controlled its policies, engaged in the manufacture and interstate sale and distribution of their immersion electrode type "Hot Donut Water Heater,"

- (a) Represented, through statements in advertisements in newspapers and circulars, that their said water heater would produce hot boiling water in a "jiffy," and that steaming hot water, heated to any temperature, would be afforded in a very short period of time, or before the user in normal course anticipated using it;

Notwithstanding the fact that it required considerable time in its heating action, depending in part upon the amount of water heated;

- (b) Represented falsely, through use of the word "Laboratories" as a part of the corporate name, in advertising literature, circulars, on letterheads and otherwise, that they owned, operated or controlled an establishment containing substantial equipment and apparatus for use in studying and experimentation by scientists or technicians employed for such purposes, and for the conduct of research in connection with the application of electricity to water heating facilities; and

- (c) Impliedly represented that their heater was harmless under all conditions of ordinary use, through failing to reveal in their advertising, or in the directions set forth upon the tag attached to said device, the dangerous consequences which might result therefrom, in that, used otherwise than as specified, and under some conditions, intolerably large amounts of electricity might flow through portions of the body, and electrocution was possible;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such statements were true, and that their said product was harmless in use, and thereby induce its purchase of said potential electrical hazard:

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. Frank Hier*, trial examiner.

Mr. Morton Nesmith for the Commission.

Bell & Ehrlick, of Washington, D. C., and *Mr. Adolf Loeb*, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of authority vested in it by said act, the Federal Trade

Commission having reason to believe that Autonator Laboratories Co., a corporation, and Harry Abelson, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Autonator Laboratories Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 460 South State Street, in the city of Chicago, State of Illinois. Respondent Harry Abelson is the president of said corporation and its principal director and as such controls the policies of said corporation. His address is 460 South State Street, in the city of Chicago, State of Illinois.

PAR. 2. Said respondents are now and for several years last past have been engaged in the manufacture and sale of an electric water heater designated as "Hot Donut Water Heater."

Said Hot Donut Water Heater is an immersion electrode-type appliance in which the heating element is exposed and in direct contact with the water or liquid. It consists of a chrome-nickel coil-wire heating element mounted on an asbestos core and encased in two aluminum shells.

PAR. 3. Respondents cause and have caused said "Hot Donut Water Heater" when sold to be shipped from their place of business in the State of Illinois to wholesalers, distributors and retailers located in various other States of the United States and in the District of Columbia. Said wholesalers, distributors, and retailers in turn sell said hot water heater to the general public or to retailers for sale to the general public. Respondents maintain and at all times mentioned herein have maintained a course of trade in said hot water heater in commerce, between and among the various States of the United States and in the District of Columbia. Their volume of business in said hot water heater in such commerce is substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their said product in commerce, respondents, subsequent to the summer of 1946, made certain statements and representations concerning said product by means of advertisements inserted in newspapers and in circulars, both of which were circulated among the purchasing public. Among and typical of such statements and representations are the following:

Complaint

46 F. T. C.

BOILING HOT WATER IN A JIFFY!

How many times have you needed hot water in a hurry for emergency or regular use—and found yourself baffled for lack of it? Now your HOT WATER problems banished forever.

Just plug into any electrical outlet—immerse the Hot Donut in water and in a jiffy before you are ready to use it, steaming hot water heated to any temperature is ready for use.

PAR. 5. Through the use of the advertisements and circulars hereinabove set forth and others of the same import, but not specifically set out herein, the respondents have represented that their Hot Donut Water Heater will produce hot boiling water in a jiffy and that steaming hot water, heated to any temperature, will be ready for use before one is ready to use the same.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, said water heater will not produce "hot boiling water in a jiffy" nor will it produce "hot water in a hurry for an emergency or regular use," nor will it produce "steaming hot water heated to any temperature in a jiffy and before you are ready to use it," but to the contrary, requires considerable time in its heating action, depending upon the amount of water heated.

PAR. 7. Respondents, by and through the use of the word "Laboratories" as a part of the corporate name, "Autonator Laboratories Co." in advertising literature, circulars, on letterheads and otherwise, represent that they own, operate or control an establishment containing substantial equipment and apparatus for use in study and experimentation by scientists or technicians employed for such purposes. In truth and in fact, respondents do not own, operate, or control such an establishment and do not employ scientists or technicians for the purposes of study or experimentation.

PAR. 8. Attached to the cord of each heater is a cardboard tag upon which is printed, among other things, the following:

DIRECTIONS

Read Before Using Heater

1. For use only on 110 volts, A. C. and D. C. use a twenty (20) ampere fuse.
2. To operate water heater, *first* place *under* water, then plug into electrical outlet and *last* turn on current.
3. *Always* pull plug *before* removing heater from water. *Never* have current "on" unless heater is completely under water.
4. *Never* touch water while current is "on."
5. *Never* use in any liquid other than *clean* water (*never* in salt water).
6. For bath, place 5 or 6 inches of water in tub. When heater has brought it to boiling point, pull electric plug and remove heater. You can then temper with cold water, to suit.

PAR. 9. Respondents' product, under some conditions of ordinary use, constitutes a serious electrical hazard in that intolerably large currents of electricity may flow through portions of the human body; in fact, under some conditions of ordinary use, electrocution is possible. By failing to reveal these facts, respondents impliedly represent, contrary to the facts, that said product is harmless under all conditions of ordinary use. Said advertisements and the tag or label attached to the product are further misleading and deceptive in that they fail to reveal the dangerous consequences which may result from the use of said product in some conditions of ordinary use.

PAR. 10. The use by the respondents of the aforesaid statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements are true, and that said product is harmless when used as directed under all ordinary conditions, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said "Hot Donut Hot Water Heater."

PAR. 11. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 11, 1949, issued and subsequently served its complaint in this proceeding upon the respondents, Autonator Laboratories Co., a corporation, and Harry Abelson, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondents' answer, at a hearing before a trial examiner of the Commission theretofore duly designated by it, certain facts in lieu of other evidence were stipulated on the record, together with a form of order to cease and desist which counsel supporting the complaint and counsel for respondents joined in recommending to the Commission for adoption, it being further stipulated that the Commission may proceed to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without further intervening procedure. Thereafter this proceeding came on for consideration before the Commission upon the complaint, answer, the stipulated facts, and the recommended order of counsel; and the Commission in declining, for

Findings

46 F. T. C.

the reasons therein expressed, to dispose of this proceeding by the entry or order to cease and desist in the form proposed by counsel, on September 30, 1949, issued tentative order to cease and desist with leave to show cause and afforded opportunity to respondents to show cause why such tentative order should not be entered as an order to cease and desist. Respondents not having appeared in response to such leave to show cause, this proceeding regularly came on for final hearing before the Commission on the record; 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. Respondent Autonator Laboratories Co. is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its office and principal place of business located at 460 South State Street, Chicago, Ill. Respondent Harry Abelson is the president of said corporation and its principal director and as such controls its policies. His address is 460 South State Street, Chicago, Ill.

PAR. 2. Respondents are now and for several years last past have been engaged in the manufacture and sale of an electric water heater designated as "Hot Donut Water Heater." Respondents' product is an immersion electrode-type appliance in which the heating element is in direct contact with the water or liquid. It consists of a chromenickel coil-wire heating element mounted on an asbestos core and encased in two perforated aluminum shells.

PAR. 3. Respondents cause and have caused their Hot Donut Water Heater when sold to be shipped from their place of business in the State of Illinois to wholesalers, distributors, and retailers located in various other States of the United States and in the District of Columbia. Such wholesalers, distributors, and retailers in turn sell respondents' products to the general public or to retailers for sale to the general public. Respondents maintain and at all times mentioned herein have maintained a course of trade in said water heater in commerce between and among the various States of the United States and in the District of Columbia. The volume of business in said product in such commerce is substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their said product in commerce, respondents, subsequent to the summer of 1946, made certain statements and

representations concerning said product by means of advertisements inserted in newspapers and in circulars, both of which were circulated among the purchasing public. Among and typical of such statements and representations are the following:

BOILING HOT WATER IN A JIFFY!

How many times have you needed hot water in a hurry for emergency or regular use—and found yourself baffled for lack of it? Now your HOT WATER problems banished forever.

Just plug into any electrical outlet—immerse the Hot Donut in water and in a jiffy before you are ready to use it, steaming hot water heated to any temperature is ready for use.

PAR. 5. Through the use of the advertisements and circulars hereinabove set forth, and others of similar import not specifically set out herein, the respondents have represented that their Hot Donut Water Heater will produce hot bailing water in a jiffy, and that steaming hot water, heated to any temperature, will be afforded in a very short period of time, or before the user in normal course anticipates using it.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. Respondents' water heater will not produce hot or boiling water "in a jiffy," nor will it produce steaming hot water in a very short period of time. Respondents' water heater requires considerable time in its heating action, depending in part upon the amount of water heated. In such connection controlled tests or experiments with respondents' product show that the following periods of time are required for heating water under the conditions specified:

Elapsed time, minutes	Temperature of water in degrees Fahrenheit			Elapsed time, minutes	Temperature of water in degrees Fahrenheit		
	3 pints	6 pints	9 pints		3 pints	6 pints	9 pints
0.....	70	59	57	15.....		184	149
1.....	86	69	64	18.....		200	163
3.....	121	88	76	21.....		207	178
6.....	167	116	95	24.....			190
9.....	200	142	115	27.....			210
12.....	204	164	132	30.....			206

PAR. 7. The use of the word "Laboratories" as a part of the corporate name "Autonator Laboratories Co.," in advertising literature, circulars, on letterheads, and otherwise, has the capacity and tendency to lead purchasers to believe that respondents own, operate, or control an establishment containing substantial equipment and apparatus for use

Conclusion

46 F. T. C.

in studying and experimentation by scientists or technicians employed for such purposes. In truth and in fact, respondents do not own or control such an establishment and do not employ scientists or technicians for the purpose of experimentation or for the conduct of research in connection with the application of electricity to water heating facilities.

PAR. 8. Attached to the cord of each heater is a cardboard tag upon which is printed, among other things, the following:

DIRECTIONS

Read Before Using Heater

1. For use only on 110 volts, A. C. and D. C. use a twenty (20) ampere fuse.
2. To operate water heater, *first* place *under* water, then plug into electrical outlet and *last* turn on current.
3. *Always* pull plug *before* removing heater from water. *Never* have current "on" unless heater is completely under water.
4. *Never* touch water while current is "on."
5. *Never* use in any liquid other than *clean* water (*never* in salt water).
6. For bath, place 5 or 6 inches of water in tub. When heater has brought it to boiling point, pull electric plug and remove heater. You can then temper with cold water, to suit.

PAR. 9. Respondents' product, under some conditions of use in heating water but not when used as set forth in the paragraph above, constitutes an electrical hazard in that intolerably large amounts of electricity may flow through portions of the human body. Under some conditions of use, electrocution is possible. By failing to reveal these facts, respondents impliedly represent that their water heater is harmless under all conditions of ordinary use. Respondents' advertising, particularly the tag or label attached to the product, is misleading and deceptive by reason of the failure to reveal the dangerous consequences which may result under some conditions from use of said product.

PAR. 10. The use by respondents of the aforesaid statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements are true and that respondents' product is harmless in use, and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' Hot Donut Water Heater.

CONCLUSION

The acts and practices of respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of respondents, certain stipulations of fact submitted for the record in lieu of other evidence by counsel for the respondents and counsel supporting the complaint together with a form of order to cease and desist which counsel jointly recommended to the Commission for adoption, and the tentative order to cease and desist issued subsequently by the Commission in connection with which respondents were afforded opportunity to show cause why such order should not be entered as the order to cease and desist in this proceeding; and respondents having not appeared in response to such leave to show cause and the Commission having thereafter made its finding as to the facts and its conclusion that respondents have violated the Federal Trade Commission Act:

It is ordered, That respondents, Autonator Laboratories Co., a corporation, its officers, representatives, agents, and employees, and Harry Abelson, his agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' electric water heating device, "Hot Donut Water Heater," or any substantially similar device, whether sold under the same name or any other name, do forthwith cease and desist from:

(1) Representing that said device will produce boiling hot water or steaming hot water "in a jiffy," or afford hot water in any other period of time less than is actually required; provided, however, that nothing herein shall prohibit use of the word "jiffy" to designate the period required to heat water if in immediate and conspicuous conjunction therewith respondents truthfully state the time required to raise one or more designated volumes of water of stated temperature to a specified temperature level.

(2) Using the word "Laboratories," or any other word of similar import or meaning, to designate, describe, or refer to respondents' business, or representing through any other means that either of said respondents owns, operates, or controls a laboratory or establishment containing substantial equipment and apparatus for use in study and experimentation by scientists or technicians employed for such purposes or for the conduct of research in connection with the application of electricity to water heating facilities.

Order

46 F. T. C.

(3) Distributing or selling said device unless the word "caution" or "warning," together with adequate directions for safe use of the device, is indelibly impressed, imprinted, or affixed thereon, informing the user that unless the directions for use are strictly followed dangerous electric shock may result; provided, however, that the word "caution" or "warning," whichever is used, may be accompanied by reference to adequate directions for safe use separately but securely attached to the device and which inform the user that unless such directions are strictly followed dangerous electric shock may result.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Order

IN THE MATTER OF

AMERICANA CORPORATION ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 5085. Order Dec. 8, 1949

Modified order in proceeding in question, in which original order issued on July 14, 1948, 45 F. T. C. 32, requiring respondent, its officers, etc., in connection with the offering, etc., in commerce, of respondent's encyclopedia designated "Americana" or "Encyclopedia Americana" and material supplementary thereto, or any other publication, to cease and desist from representing that its said publication is the best known, etc., published in the United States, and contains more articles than any other encyclopedia, and from making various other misrepresentations in connection with the offer of said product, as below in detail set out.

Before *Mr. Randolph Preston*, trial examiner.

Mr. John M. Russell for the Commission.

Mr. J. Raymond Tiffany, of Hoboken, N. J., and *Mr. Benjamin Werne*, of New York City, for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's answers thereto, and a stipulation of facts entered into by and between counsel for the respondents and counsel in support of the complaint (the recommended decisions of the trial examiner, briefs, and oral argument having been waived); and the Commission, having made its findings as to the facts and its conclusion that the respondents had violated the provisions of the Federal Trade Commission Act, on July 14, 1948, issued, and on July 28, 1948, served upon each of the respondents its order to cease and desist. Thereafter, this matter came on for hearing before the Commission upon a petition, filed on behalf of the respondent, Americana Corporation, requesting certain modifications in the aforesaid order to cease and desist, and the answer to such petition filed by counsel in support of the complaint; and the Commission, having considered said petition and answer and the record herein, and being of the opinion that its order to cease and desist issued July 14, 1948, should be modified in certain respects:

It is ordered, That the respondent, Americana Corporation, a Delaware corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in con-