

Syllabus

IN THE MATTER OF

TERMITGAS, INC., CHARLES H. LEWIS, DAVID S.
LEWIS AND BERNARD B. LEWISCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5631. Complaint, Dec. 31, 1948—Decision, Mar. 15, 1950*

Where a father and two sons, engaged in the interstate sale and distribution of a mixture which they advertised for the destruction and prevention of termites and other insects and sold in containers with labels bearing the name and address of a corporation owned and controlled by them, but which had never done business as a corporation; in advertising said product in newspapers, pamphlets, booklets, letterheads, billheads and other advertising media, in some of which they depicted a can of the product labeled as above set forth—

- (a) Represented that the concern indicated by one of the trade names employed by them was established in 1890; that a significant portion of the business was that of importing and exporting industrial chemicals; and that they were termite experts and entomologists;

The facts being that while the father had been engaged in the business of retailing industrial chemicals to small industries and laboratories for about 40 years, the firm name in question was adopted about 15 years ago and the business here concerned was not begun until about 12 years ago; while the three individuals had in the past exported and imported small quantities of industrial chemicals, the limited extent of such business did not justify the designation of "importers" and "exporters"; their experience in the destruction and control of termites was not sufficient to warrant classifying any of them as experts; and none was an entomologist;

- (b) Represented that their said termitgas worked miracles, and was a new "atomic bomb" spray for termites; that the owner or occupant could use it himself; that 1 gallon was adequate to control termites in a six-room house, and, used as a spray, was sufficient to insure a building such as a home, barn, or cottage against termite infestation; and that there was nothing like it for complete destruction of termites;

The facts being that it was not a miracle chemical, did not utilize atomic energy in the killing of termites and designation thereof as an "atomic bomb spray" was unwarranted; it is impossible to state with any degree of accuracy the amount of said product required to rid a building of termites without a careful inspection of the premises by a person with knowledge of their habits; there are a number of chemicals which, as known for a considerable period, are effective when properly applied as termite killers, but neither they, nor the product concerned, are effective when sprayed on the wood or around the foundation of a building, since, thus applied, they do not reach the termites in the ground or inside the wood; and, even properly applied, the product cannot be depended upon to prevent infestation or reinfestation of a building containing wood for longer than a year;

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- (c) Represented falsely that termite eggs are hatched in the nest at the rate of 80,000 eggs a day; that termitgas used as a spray would reach such nests and breeders and completely destroy them; was equally effective on all other insects, roaches, ants, flies, mosquitoes, etc.; was the first effective termite killer and was effective a few minutes after application; and was sold all over the world;

The facts being there is no authority for said statements; and 90 percent of its sales were made in the New York metropolitan area, and it was sold in only a few countries other than the United States;

With capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby cause its purchase of 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 said proceeding, in which the stipulation included no facts concerning the allegations of the complaint that respondents were not manufacturing chemists, analytical chemists or consulting chemists, as understood in the trade and by the purchasing public, no findings were made with respect thereto.

Mr. Joseph E. Callaway 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 Trade Commission, having reason to believe that Termitgas, Inc., a corporation, Charles H. Lewis, David S. Lewis, and Bernard B. Lewis, individually, as directors of Termitgas, Inc., and also trading as The Lewis Co., and as Termite Products Co., have 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. Termitgas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York and having its principal place of business at 232 Canal Street, New York, N. Y.

PAR. 2. The individual respondents Charles H. Lewis, David S. Lewis, and Bernard B. Lewis are directors of the respondent Termitgas, Inc. They also have their office and principal place of business at 232 Canal Street in the city of New York, N. Y., and formulate, direct, and control the acts, policies and business affairs of said corporation. Said individual respondents also have been and are now trading and doing business as The Lewis Co., and as Termite Products Co., with office and principal place of business at the location stated above.

PAR. 3. Respondents are now and for several years last past have been engaged in the sale and distribution of a mixture of orthodichloro-benzene and ortho-cresylic acid called "Termitgas" advertised for the destruction and prevention of termites and other insects. The respondents cause and have caused their said product when sold to be shipped from their place of business located in the State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia. The said respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said product in commerce among and between the various States of the United States and in the District of Columbia. Respondents' volume of business in said product in said commerce is substantial.

PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their said product designated as "Termitgas," respondents have made and are making, many false, deceptive, and misleading representations relating to their business status, facilities, and the value and effectiveness of their said product, through advertisements in newspapers, pamphlets, booklets, letterheads, billheads, and other advertising media. Among and typical of the false, deceptive, and misleading statements and representations contained in said advertisements are the following:

The Lewis Company. Established 1909. Importers, manufacturers, exporters of industrial chemicals.

Manufacturing, analytical, and consulting chemists.

The miracle chemical. TERMITGAS. New "Atomic Bomb" spray for termites.

TERMITGAS. Enough to treat an average six-room house \$6.00 gallon. * * * TERMITGAS is effective minutes after application.

In general, in the application of TERMITGAS, give your premises a careful survey and you can easily do it yourself. Remember you are primarily interested in the destruction of subterranean termites. Simple language has been used in this pamphlet for you to recognize this termite, its habits, etc. * * * You solve the problem yourself. * * * Should further questions arise consult us. Our advice by our experts is gratis.

There is nothing like TERMITGAS for complete destruction of termites in homes, barns, cottages, farms, etc. Just one gallon of this deadly-to-termites spray gets right to the heart of "termitaria" where eggs are hatched at the rate of 80,000 every day! TERMITGAS destroys the nests and breeders. Equally effective on all other insects: Roaches, ants, flies, mosquitoes, etc.

TERMITGAS Non-inflammable. A single gallon does the job. The universal scientific spray for termites. * * * Actually insure your home, barns, bungalows, buildings, against termite infestation.

TERMITGAS. A liquid. Is first. With this effective termite killer \$6.00 gallon.

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TERMITGAS—a liquid—has been on the market for the past fifteen years. * * * Should any question arise, do not hesitate to call or write to our chemists and entomologists who will answer your every problem gratis.

TERMITGAS—a liquid—is sold in every corner of the globe.

PAR. 5. Through the use of the above-mentioned statements and others similar thereto the respondents have represented that their present business was established in 1909; that they are manufacturing chemists, and analytical and consulting chemists; that they are in the business of importing and exporting industrial chemicals; that they are termite experts and entomologists; that Termitgas works miracles; that it is a new "Atomic Bomb" spray for termites; that one gallon of Termitgas is adequate to control termites in a six-room house; that 1 gallon of Termitgas used as a spray is sufficient to insure a building such as a home, barn, or cottage against termite infestation; that there is nothing like it for complete destruction of termites; that termite eggs are hatched in the nest at the rate of 80,000 eggs per day; that Termitgas used as a spray will reach the termite nest and breeders and completely destroy them; that it is equally effective on all other insects, roaches, ants, flies, mosquitoes, etc.; that it is the first effective termite killer and is effective a few minutes after application; and that Termitgas is sold all over the world.

PAR. 6. The foregoing representations were and are false, misleading, and deceptive in the following respects: Respondents' present business was not established in 1909, but at a much later date. Respondents are neither manufacturing chemists, analytical chemists, nor consulting chemists, as those terms are understood in the trade and by the purchasing public. Respondents are not now, nor have they ever been, in the business of importing or exporting industrial chemicals. They are neither termite experts nor entomologists. Termitgas is not a miracle chemical. There are a number of chemicals that are and have been known for a number of years as effective termite killers when properly applied. Some of these chemicals are ingredients of Termitgas. None of such chemicals are effective when sprayed on the wood or around the foundation of a building, for the reason that, applied in such manner, they do not reach the termites nesting in the ground or working on the inside of wood in a building. It is impossible to state with any degree of accuracy the amount of Termitgas or any other termite killing chemicals necessary to rid a building of termites until after a careful inspection of the premises. Even when properly applied, Termitgas cannot be depended upon to prevent the infestation or reinfestation of any building containing

wood for longer than one year. Termitgas does not utilize atomic energy in the killing of termites and calling it an "Atomic Bomb Spray" is unwarranted. There are other products equally effective for destruction of termites. There is no authority, scientific or otherwise, for the statement that termite eggs are hatched in the nest at the rate of 80,000 eggs per day. Termitgas when used as directed will not destroy all other insects, particularly it will not destroy roaches, flies, or mosquitoes. It was not the first effective termite killer and is not completely effective immediately or within a few minutes after application, no matter how it is applied. Termitgas is not sold all over the world. In fact, it has been sold in only a few of the States of the United States.

PAR. 7. The use by the respondents of the foregoing false, misleading and deceptive representations disseminated as aforesaid, with respect to the product Termitgas, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the consuming public into the erroneous and mistaken belief that such representations were and are true and to cause, and does cause, a substantial portion of the purchasing public to purchase said product because of such erroneous belief.

PAR. 8. The aforesaid acts and practices of the respondents are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices 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 31, 1948, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter a stipulation as to the facts was entered into between Daniel J. Murphy, Chief of Trial Division, of the Federal Trade Commission, and respondents, which provided that, subject to the approval of the Federal Trade Commission, the facts set forth therein might be taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint or in opposition thereto, and that the Commission might proceed upon said statement of facts to make its report stating its findings as to the facts (including inferences which might be drawn from said stipulated facts) and its conclusion based thereon and enter its

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order disposing of this proceeding without the presentation of argument or the filing of briefs. Respondents expressly waived the filing of the recommended decision by the trial examiner. Subsequently the matter regularly came on for final consideration by the Commission upon the complaint and stipulation as to the facts, said stipulation having been approved, accepted, and filed by the Commission; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Termitgas, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with offices located at 232 Canal Street, New York, N. Y. Termitgas, Inc., has never done business as a corporation, but the individual respondents have used the corporate name in the course and conduct of their business as hereinafter set forth.

PAR. 2. The individual respondents, Charles H. Lewis, David S. Lewis, and Bernard B. Lewis, are the sole owners of all of the stock of the corporate respondent, Termitgas, Inc. They also have their office and principal place of business at 232 Canal Street in the City of New York, N. Y., and have power and control over the acts, policies, and business affairs of said corporation. The said individual respondents also have been and are now trading and doing business as The Lewis Co. with office and principal place of business in the location stated above. As hereinafter used, the term "respondents" includes only the individual respondents.

PAR. 3. The respondents are now and for several years last past have been engaged in the sale and distribution of a mixture of orthodichlorobenzene and orthocresylic acid called "Termitgas," advertised for the destruction and prevention of termites and other insects. The respondents cause and have caused their said product when sold to be shipped from their place of business located in the State of New York, to purchasers thereof located in various other States of the United States and in the District of Columbia. The said respondents maintain, and at all times mentioned herein have maintained, a course of trade in their said product in commerce among and between the various States of the United States and in District of Columbia. During the same period of time the product has been sold and offered for sale as aforesaid with labels on the containers which bore the legend "Termitgas, Inc., 232 Canal Street, New York, N. Y." The volume of business in said product in said commerce is substantial.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said product designated as "Termitgas," the respondents have made certain representations relating to their business status, facilities, and the value and effectiveness of their said product through advertisements in newspapers, pamphlets, booklets, letterheads, billheads, and other advertising media. Pamphlets or booklets relating to the value and effectiveness of Termitgas carried a picture of a can of the product on which could plainly be seen the legend "Termitgas Incorporated, 232 Canal Street, New York, N. Y." Among the statements and representations contained in said advertisements were the following:

The Lewis Company, Established 1909. Importers, manufacturers, exporters of industrial chemicals.

The miracle chemical.

TERMITGAS. New "Atomic Bomb" spray for termites.

TERMITGAS. Enough to treat an average six-room house \$6.00 gallon. * * *

TERMITGAS is effective minutes after application.

In general, in the application of TERMITGAS, give your premises a careful survey and you can easily do it yourself. Remember you are primarily interested in the destruction of subterranean termites. Simple language has been used in this pamphlet for you to recognize this termite, its habits, etc. * * * You solve the problem yourself. * * * Should further questions arise consult us. Our advice by our experts is gratis.

There is nothing like TERMITGAS for complete destruction of termites in homes, barns, cottages, farms, etc. Just one gallon of this deadly-to-termites spray gets right to the heart of "termitaria" where eggs are hatched at the rate of 80,000 every day! TERMITGAS destroys the nests and breeders. Equally effective on all other insects: Roaches, ants, flies, mosquitoes, etc."

TERMITGAS Non-inflammable. A single gallon does the job. The Universal scientific spray for termites. * * * actually insure your home, barns, bungalows, buildings, against termite infestation.

TERMITGAS A liquid. Is first. With this effective termite killer \$6.00 gallon.

TERMITGAS—a liquid—has been on the market for the past fifteen years. * * * Should any question arise, do not hesitate to call or write to our chemists and entomologists who will answer your every problem gratis.

TERMITGAS—a liquid—is sold in every corner of the globe.

PAR. 5. Through the use of the above-mentioned statements and others similar thereto the respondents have represented that their present business was established in 1909; that a significant portion of the business is that of importing and exporting industrial chemicals; that they are termite experts and entomologists; that Termitgas works miracles; that it is a new "Atomic Bomb" spray for termites; that one gallon of Termitgas is adequate to control termites in a six-room house;

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that one gallon of Termitgas used as a spray is sufficient to insure a building such as a home, barn, or cottage against termite infestation; that there is nothing like it for complete destruction of termites; that termite eggs are hatched in the nest at the rate of 80,000 eggs per day; that Termitgas used as a spray will reach the termite nest and breeders and completely destroy them; that it is equally effective on all other insects, roaches, ants, flies, mosquitoes, etc.; that it is the first effective termite killer and is effective a few minutes after application; and that Termitgas is sold all over the world.

PAR. 6. In truth and in fact, respondents' present business was not established in 1909. Respondent Charles H. Lewis has engaged in the business of retailing industrial chemicals to small industries and laboratories for approximately 40 years, but the present firm name was adopted approximately 15 years ago, and since that time the respondents David S. Lewis and Bernard B. Lewis, sons of the respondent Charles H. Lewis, have been taken into the business.

The present business of selling a preparation designed for the destruction of termites, including the preparation Termitgas, was begun approximately 12 years ago. Respondents have in the past exported and imported small quantities of industrial chemicals. The amount of such business is, however, of such limited extent that such activities do not justify the designation of "importers" and "exporters." Respondents have had some experience in the destruction and control of termites. Such experience, however, has not been sufficient to warrant classifying any of them as experts. None of the respondents is an entomologist. Termitgas is not a miracle chemical. Termitgas does not utilize atomic energy in the killing of termites, and designating it as an "Atomic Bomb Spray" is unwarranted. It is impossible to state with any degree of accuracy the amount of Termitgas required to rid a building of termites until after a careful inspection of the premises by a person with knowledge of the habits of said insects. There are a number of chemicals that are and have been known for a considerable period of time which, when properly applied, are effective as termite killers. None of such chemicals are, however, nor is the product Termitgas, effective when sprayed on the wood or around the foundation of a building for the reason that, applied in such manner, they do not reach the termites nesting in the ground or working on the inside of wood in a building. Even when properly applied, Termitgas cannot be depended upon to prevent the infestation or reinfestation of any building containing wood for longer than 1 year. There is no authority, scientific or otherwise, for the

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statement that termite eggs are hatched in the nest at the rate of 80,000 eggs per day. Termitgas, when used as directed, will not destroy many insects including roaches, flies, and mosquitoes. It was not the first effective termite killer and is not completely effective immediately or within a few minutes after application, no matter how it is applied. Termitgas is not sold all over the world. Ninety percent of its sales have been in the New York metropolitan area and it has been sold in only a few countries other than the United States.

PAR. 7. For the reasons stated and in the particulars indicated herein, the Commission finds that the statements and representations made by the respondents with respect to their business status, facilities, and the value and effectiveness of their said product, are false, misleading and deceptive.

PAR. 8. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has had the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and to cause a substantial portion of said purchasing public to purchase respondents' product because of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act. No facts were stipulated concerning the allegations of the complaint that the respondents are neither manufacturing chemists, analytical chemists, nor consulting chemists as those terms are understood in the trade and by the purchasing public. Consequently, no findings have been made with respect thereto.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the stipulation as to the facts entered into by and between Daniel J. Murphy, Chief of Trial Division, of the Federal Trade Commission, and respondents, in which stipulation the respondents waived all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the respondents, except

corporate respondent Termitgas, Inc., have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents Charles H. Lewis, David S. Lewis, and Bernard B. Lewis, individually and trading and doing business as The Lewis Co. or under any other name, their 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 their product designated "Termitgas," or any other product of similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

- (1) That their present business of selling a preparation designed for the destruction of termites was established in 1909 or in any other year prior to the date said business was actually begun;
- (2) That they, or any of them, are importers or exporters of industrial chemicals;
- (3) That they, or any of them, are experts in the destruction or control of termites or are entomologists;
- (4) That the said product is a miracle chemical;
- (5) That said product utilizes atomic energy in the killing of termites or that it is an "Atomic Bomb" spray;
- (6) That it is possible to determine the amount of Termitgas required to rid a building of termites prior to inspection of the premises by a person with knowledge of the habits of said insects;
- (7) That there are no other chemicals which are effective in destroying termites;
- (8) That it is possible to determine the number of termite eggs hatched daily or in any other period of time in a termite-infested building;
- (9) That said product when used as a spray on the wood or around the foundation of a building will be effective in destroying termites nesting in the ground or working on the inside of wood in a building;
- (10) That said product when used as directed will destroy all other insects, including roaches, flies, and mosquitoes;
- (11) That said product was the first effective termite killer;
- (12) That said product is effective immediately or within a few minutes after application;
- (13) That said product is sold all over the world.

It is further ordered, That the complaint herein as to Termitgas, Inc., be, and the same hereby is, dismissed.

It is further ordered, That the respondents, except Termitgas, Inc., shall, within 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.

IN THE MATTER OF
MONARCH SALES COMPANY, RALPH E. STOLKIN, RUTH
M. STOLKIN AND MARY REID

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

Docket 5477. Complaint, Jan. 10, 1947—Decision, Mar. 20, 1950

Where a corporation and the two officers who owned its stock and managed and controlled it, engaged in the interstate sale and distribution of cameras, fountain pens, electric razors, billfolds and other articles; in soliciting the sale of and in selling and distributing their merchandise—

- (a) Furnished various devices and merchandising plans which involved the operation of lottery schemes in the sale and distribution of such merchandise to the ultimate consumer, and included the distribution to members of the public throughout the United States of order blanks, illustrated pamphlets describing their merchandise, and circulars explaining their plan of selling and distributing the same to the public and allotting it as premiums or prizes to the operators of said cards, along with push cards, for use in accordance with schemes through which, as typical, the cost of a chance was determined by the number revealed by a push, the person selecting by chance from a list of feminine names the name corresponding with that concealed in the master seal received a "candid color camera," and each of two specified numbers entitled the person punching it to a "genuine leather billfold";

Whereby lot or chance determined whether a purchaser received an article or merchandise or nothing for his money, and likewise the amount he paid for the merchandise or chance to receive it; and,

They thereby placed in the hands of those to whom they furnished said cards the means of conducting games of chance in the sale of merchandise, contrary to an established public policy of the United States Government;

With the result that many persons were attracted by said sales plans and the element of chance involved therein, and were thereby induced to buy and sell said merchandise;

Held, That the use of the aforesaid sales plans or methods constituted unfair acts and practices in commerce; and

Where the aforesaid corporation and individuals, in the aforesaid literature distributed to the purchasing public—

- (b) Represented that the camera distributed by them was a color camera equipped with a high-speed lens and shutter, through such statements as "the color camera you never thought you could own," "this remarkable camera actually takes pictures in full natural color as quickly and simply as some cameras take ordinary black and white snapshots"; and "high-speed round lens, faster shutter";

The facts being that there is no camera which will take a colored picture; and while, if colored film were used in their said camera, pictures might be taken