

Complaint

IN THE MATTER OF
NEW YORK FEATHER COMPANY, INC. ET AL.

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

Docket 5840. Complaint, Jan. 18, 1951—Decision, Oct. 2, 1951

Where a corporation and its two officers, engaged in the manufacture and interstate sale and distribution of pillows—

Inaccurately and misleadingly labeled certain of their said products in that, as illustrative, a pillow labeled "10% Down, 90% Duck Feathers," actually contained no down and only 24 percent duck feathers, with chicken and turkey feathers, chicken and turkey feather fiber and other materials as the remainder; one labeled "50% Down, 50% Duck Feathers" contained only 6.7 percent down and about 82 percent duck feathers; and a third labeled "White Goose Down" contained 46.7 percent thereof, about 47 percent white goose feathers, and 6 percent feather fiber;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public and thereby induce it to purchase their products:

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. William L. Pack*, trial examiner.

Mr. Russell T. Porter for the Commission.

Mr. Harry Heller, of Brooklyn, N. Y., for respondents.

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 New York Feather Co., Inc., a corporation, and Joseph Yurkowitz and Mandel Yurkowitz, individually and as officers of said corporation, hereinafter referred to as respondents, 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:

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PARAGRAPH 1. Respondent New York Feather Company, Inc., is 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 located at 62-76 Rutledge Street, Brooklyn 11, New York.

Respondents Joseph Yurkowitz and Mandel Yurkowitz are now, and at all times mentioned herein have been, the president and secretary-treasurer, respectively, of the corporate respondent and as such officers have formulated, directed and controlled the policies and practices of the corporate respondent, including the practices hereinafter set forth.

PAR. 2. Respondents are now and for several years last past have been engaged in the manufacture and sale of pillows to dealers for resale to the public. In the course and conduct of such business respondents cause their said pillows when sold to be shipped from their place of business in the State of New York to dealers in various other States of the United States and maintain, and at all times mentioned herein have maintained, a course of trade in said pillows in commerce among and between the various States of the United States. Their business in such trade has been substantial.

PAR. 3. Respondents in the course and conduct of their business cause labels to be attached to their pillows purporting to state and set out the percentage of down and feathers and the kind of feathers therein. Typical of the statements appearing on these labels are the following:

"10% Down—90% Duck Feathers," said pillow being designated as "Daisy"

"50% Down—50% Duck Feathers," said pillow being designated as "Lily"

"White Goose Down," said pillow being designated as "Gardenia"

PAR. 4. Through the use of the statements and representations appearing on the labels aforesaid respondents represented that the filling in the pillow designated as "Daisy" is composed of 10% down, the undercoating of waterfowl, and 90% duck feathers; that the filling of the pillow designated as "Lily" is composed of 50% down, the undercoating of waterfowl, and 50% duck feathers; and that the filling of the pillow designated as "Gardenia" is composed entirely of white goose down, the undercoating of a waterfowl.

PAR. 5. Said statements are false, misleading and deceptive. In truth and in fact, the filling of the pillow designated as "Daisy" was composed of 24% duck feathers, approximately 20% chicken and turkey feathers and approximately 51% chicken and turkey feather fiber, the balance being other material. The filling of the pillow designated "Lily" was composed of 6.7% down, approximately 82% duck feathers and approximately 9% turkey and chicken feather fiber, the bal-

ance being other material. The filling of the pillow designated as "Gardenia" was composed of 46.7% white goose down, approximately 47% white goose feathers and approximately 7% feather fiber.

PAR. 6. By attaching the false, misleading and deceptive labels to their pillows, respondents placed in the hands of dealers means and instrumentalities by and through which they may mislead the purchasing public as to the content of said pillows.

PAR. 7. The use by respondents of the foregoing false, misleading and deceptive representations on the labels of their products has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public as to the content of their said pillows and to induce members of the public to purchase substantial quantities of their said pillows because of such mistaken and erroneous belief.

PAR. 8. 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated October 2, 1951, the initial decision in the instant matter of trial examiner William L. Pack, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY WILLIAM L. PACK, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 18, 1951, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel supporting the complaint and counsel for respondents might be taken as the facts in this proceeding and in lieu of evidence in support of and in opposition to the charges stated in the complaint, and that such statement of facts might serve as the basis for findings as to the facts and conclusion based thereon and an order disposing of the proceeding. While counsel for respondents reserved in the stipula-

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tion the right to file proposed findings and conclusions and to argue the matter orally before the trial examiner, such reservations were subsequently waived. The stipulation further provided that upon appeal to or review by the Commission such stipulation might be set aside by the Commission and this matter remanded for further proceedings under the complaint. Thereafter the proceeding regularly came on for final consideration by the trial examiner upon the complaint, answer and stipulation, the stipulation having been approved by the trial examiner, who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent New York Feather Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 62-76 Rutledge Street, Brooklyn, N. Y. Respondents Joseph Yurkowitz and Mandel Yurkowitz are president and secretary-treasurer, respectively, of respondent corporation. The individual respondents formulate, direct and control the policies and practices of the corporation.

PAR. 2. Respondents are now and for several years last past have been engaged in the manufacture and sale of pillows, the pillows being sold to dealers for resale to the public. Respondents cause and have caused their pillows, when sold, to be shipped from their place of business in the State of New York to purchasers in various other States of the United States. Respondents maintain and have maintained a course of trade in their pillows in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business respondents attach to their pillows labels purporting to state or set forth the materials of which such pillows are made. In some instances such labels have been inaccurate and misleading. In one instance a pillow labeled "10% Down, 90% Duck Feathers" actually contained no down, the undercoating of waterfowl, and only 24 percent duck feathers, the remaining content being chicken and turkey feathers and chicken and turkey feather fiber and other materials. In another instance a pillow labeled "50% Down, 50% Duck Feathers" was found to contain only 6.7 percent down, and approximately 82 percent duck feathers and approximately 9 percent turkey and chicken feather fiber, the remaining content being other materials. In a third instance a pillow labeled "White Goose Down" actually contained only 46.7 percent white goose

down, approximately 47 percent white goose feathers and approximately 6 percent feather fiber.

PAR. 4. The acts and practices of respondents as set forth above have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' products, and the tendency and capacity to cause such portion of the public to purchase respondents' products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents as hereinabove set out 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

It is ordered, That the respondents, New York Feather Co., Inc., a corporation, and its officers, and Joseph Yurkowitz and Mandel Yurkowitz, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pillows in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Misrepresenting in any manner or by any means, directly or by implication, the materials of which respondents' pillows are made.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein 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 the order to cease and desist [as required by said declaratory decision and order of October 2, 1951].

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IN THE MATTER OF
ARABIAN TOILET GOODS COMPANY

MODIFIED ORDER TO CEASE AND DESIST

Docket 2981. Order, Oct. 4, 1951

Order further modifying prior modified order in said matter—in which findings and cease and desist order issued on January 20, 1938, 26 F. T. C. 441, and prior modified order issued on December 16, 1939, 30 F. T. C. 76—

So as to require respondent and its representatives, in connection with the offer, etc., of cosmetics in interstate commerce, to cease and desist from using the term "Certified Cosmetic" or other term of similar import, etc., to refer to cosmetic products "unless the identity of the certifier is clearly disclosed in direct connection therewith"; and from otherwise misrepresenting its "Wrinkle Creme" or any similar skin cream, as in said order below set out.

Before *Mr. John L. Hornor*, trial examiner.

Mr. DeWitt T. Puckett and *Mr. Joseph Callaway* for the Commission.

Mr. George J. Crane, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs in support of the complaint and in opposition thereto (no oral argument having been requested), the Commission, having made its findings as to the facts and its conclusion that said respondent had violated the provisions of the Federal Trade Commission Act, on January 20, 1938, issued and subsequently served upon the respondent said findings as to the facts, conclusion and its order to cease and desist. Thereafter, upon motion of the Chief Counsel for the Commission to modify the order to cease and desist in certain respects, proper notice and opportunity to be heard having been given to respondent, the Commission on December 16, 1939 issued and subsequently served upon the respondent its modified order to cease and desist.

Thereafter, this matter came on for reconsideration by the Commission upon its own motion to reopen this proceeding for the pur-

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pose of further modifying the order to cease and desist herein, no answer having been filed by respondent in response to an order served on it by the Commission notifying respondent of the Commission's said motion and granting to it leave to show cause why the order to cease and desist should not be so modified, and the Commission having reconsidered the matter and being of the opinion that its modified order to cease and desist issued on December 16, 1939 should be further modified in certain respects:

It is ordered, That the respondent, Arabian Toilet Goods Co., Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of cosmetics in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

(1) Using the term "Certified Cosmetic" or any other term of similar import or meaning to describe or refer to cosmetic products unless the identity of the certifier is clearly disclosed in direct connection therewith.

(2) Representing that its skin cream now designated as Wrinkle Creme, or any other cream containing substantially the same ingredients or possessing the same properties, sold under that name or any other name

(a) will nourish or rejuvenate the skin;

(b) will remove wrinkles and lines from the skin;

(c) contains turtle oil or is guaranteed by the United States Government to contain pure turtle oil.

(3) Representing that turtle oil has been successfully used by the United States Government in removing scar tissue and wrinkles from wounded soldiers.

(4) Representing that the use of turtle oil has been indorsed or approved by the United States Government as a skin food and rejuvenator.

IN THE MATTER OF
PENNSYLVANIA OIL TERMINAL, INC. ET AL.

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

Docket 5868. Complaint, Mar. 27, 1951—Decision, Oct. 4, 1951

The term "Pennsylvania oil" is recognized throughout the trade and by a substantial portion of the purchasing public as meaning oil refined from crude oil produced in the geographic area known as the Pennsylvania oil field, which includes the western portion of Pennsylvania and contiguous portions of New York, Ohio, and West Virginia.

Pennsylvania oil has for some time been well and favorably known to the purchasing public, and there is the preference on the part of a substantial portion of the public for such oil over oils refined from crude oil produced in other localities.

Where oil, with the appearance of the new and unused product, is sold in containers of the same general size, kind and appearance as those used for new oil, the general understanding and belief on the part of dealers and the purchasing public, in the absence of a disclosure on the container that the oil is reclaimed or reprocessed, is that it is in fact new.

There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used and reclaimed or reprocessed oil, due in part to the belief that new and unused oil is superior in quality to oil that has been used and reclaimed or reprocessed.

Where a corporation, its president, and its former president, holder of an exclusive franchise to sell its products within a certain territory, engaged in the interstate sale and distribution to retail distributors under the brand name "Penolube Motor Oil," of a product which consisted in whole or in part of used oil, reclaimed from drainings of motor crankcases and other sources—

- (a) Falsely represented by the use of its corporate name including the words "Pennsylvania Oil Terminal," in conjunction with the word "Penolube" in their brand name, through statements in trade journals and other advertising and on the labels, that the said lubricating oil, packaged and sold by them, was refined and processed entirely from oil produced in the Pennsylvania oil field;
- (b) Sold said oil, which had the appearance of new and unused oil, in containers of the same general size, kind and appearance as those used for new oil, with no markings of any kind indicating that it was reclaimed or reprocessed;

With the result of placing in the hands of retailers a means of misleading the purchasing public, and with capacity and tendency to mislead a substantial number of retailers and members of the purchasing public, and

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with effect of thereby causing purchase of substantial quantities of their said product:

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

As respects respondents' contention that the brand name "Penolube" was not of itself misleading or deceptive, since it did not alone connote oil derived from crude oil produced in the Pennsylvania field—while admitting that the corporate name was misleading and deceptive and that the representations and container labels were likewise so by reason of the use of the brand name and the corporate name together—there was no charge in the complaint that said brand name alone was false, deceptive or misleading, the charge being confined to the use of both names in conjunction.

Before *Mr. Frank Hier*, trial examiner.

Mr. Jesse D. Kash 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 Pennsylvania Oil Terminal, Inc., a corporation, Douglas Price, Clara Price, Muriel C. Johnson, individually and as officers of said corporation, and Eugene K. Johnson, an individual, hereinafter referred to as respondents, 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. Pennsylvania Oil Terminal, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 3500 Branch Avenue, Silver Hill, Md. Respondents Douglas Price, Clara Price, and Muriel C. Johnson are president, vice president and secretary, respectively, of said corporate respondent, with their business address the same as that of corporate respondent. Respondent Eugene K. Johnson, an individual, was formerly the president of corporate respondent and now holds an exclusive franchise to sell corporate respondents' product within a fifty-mile radius of Washington, D. C. His office and resident address is located at 1009 Eleventh Street, NW., Washington, D. C. The said officers, together with respondent Eugene K. Johnson, formulate and direct the policies and practices of the corporate respondent.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the sale and distribution of motor oil to retail

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distributors for resale to the public. Respondents sell said product under the brand name "Penolube Motor Oil."

PAR. 3. Respondents cause and have caused their said product, when sold, to be transported from their 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. Respondents maintain and have maintained a course of trade in their product in commerce among and between the various States of the United States. Their volume of business in the sale of said product in commerce has been substantial.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, the respondents have made and now make certain representations regarding the origin and quality of their oil, in advertisements inserted in trade journals and in other advertising media and on the label of their product. Among and typical of said representations are the following:

Representations in advertising:

PENOLUBE Motor Oil is *not* just an
ordinary motor oil.

PENOLUBE carries a high fire and
flash and is over 100 V. I.

A PREMIUM OIL THAT MEANS *EXTRA PROFITS*
TO YOU

Label on product:

Penolube
A High Quality
MOTOR OIL

PENNSYLVANIA OIL TERMINAL, INC.

Main Office

WASHINGTON, D. C.

PAR. 5. Through the use of the abbreviation "Pen" as a part of the brand name "Penolube," and the word "Pennsylvania" as a part of the corporate name, respondents have represented and now represent that their oil product is refined and processed entirely from oil produced in the Pennsylvania oil field.

PAR. 6. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact, respondents' Penolube oil

was not and is not refined entirely from oil produced in the Pennsylvania oil field, and consists entirely or in substantial part of oil produced in oil fields other than the Pennsylvania field.

PAR. 7. The term "Pennsylvania Oil" is recognized throughout the trade and by a substantial portion of the purchasing public as meaning oil refined from crude oil produced in a geographical area known as the Pennsylvania oil field which includes the western portion of Pennsylvania and contiguous portions of New York, Ohio, and West Virginia. Pennsylvania oil has for some time been well and favorably known to the purchasing public and there is a preference on the part of a substantial portion of the public for such oil over oils refined from crude oil produced in other localities.

PAR. 8. Respondents' oil consists in whole or in substantial part of used oil obtained from drainings of motor crank cases and from other sources which is thereafter reclaimed or reprocessed. Said oil is sold in containers of the same general size, kind and appearance as those used for new oil and has the appearance of new and unused oil. The containers bear no markings of any kind indicating that said product is reclaimed or reprocessed oil. In the absence of a disclosure on the containers that the oil therein is reclaimed or reprocessed, the general understanding and belief on the part of dealers and the purchasing public is that oil sold in containers such as are used by respondents is, in fact, new oil and not reclaimed or reprocessed oil. There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used and reclaimed or reprocessed oil, such preference being due in part to the belief that new and unused oil is superior in quality to oil that has been used and reclaimed or reprocessed.

PAR. 9. The respondents' said acts and practices further serve to place in the hands of retailers a means and instrumentality whereby such persons may mislead the purchasing public in respect to the origin and quality of respondents' product.

PAR. 10. The use by respondents of the aforesaid false, deceptive and misleading statements and representations with respect to their product and the failure to disclose that their oil is composed in whole or in part of used oil which has been reclaimed or reprocessed, has had and now has, the tendency and capacity to mislead and deceive a substantial number of retailers and members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and causes and has caused a substantial number of the purchasing public to purchase substantial quantities of respondents' product because of such erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of the 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.

ORDERS AND DECISION OF THE COMMISSION

Order denying appeal from initial decision of trial examiner and decision of the Commission and order to file report of compliance, Docket 5868, October 4, 1951, follows:

This matter coming on to be heard by the Commission upon the motion of counsel supporting the complaint that the initial decision of the trial examiner issued on June 11, 1951, be placed on the Commission's own docket, that said initial decision be vacated and set aside, and that Paragraph Five of the complaint herein be amended and the case thereafter be remanded to the trial examiner for the purpose of receiving proof in support of the complaint as amended, which motion the Commission has considered an appeal by counsel supporting the complaint from the trial examiner's initial decision; and

It appearing that the grounds relied upon in support of said appeal are that the trial examiner construed the allegations of Paragraph Five of the complaint in a manner different from that which was intended and that the public interest requires the action requested; and

The Commission having duly considered said appeal and the record herein and being of the opinion that the trial examiner was not in error in construing the complaint herein as not charging that respondents' use of the brand name "Penolube" alone is false, misleading, or deceptive, and that it would not be proper to amend the complaint at this stage of the proceeding to include such a charge, and being of the further opinion that the trial examiner's initial decision is appropriate in all respects to dispose of all the issues in this proceeding:

It is ordered, That the appeal of counsel supporting the complaint from the initial decision of the trial examiner and the request therein be, and they hereby are, denied.

It is further ordered, That the attached initial decision of the trial examiner shall, on the 4th day of October, 1951, become the decision of the Commission.

It is further ordered, That the respondents, except Clara Price and Muriel C. Johnson, shall, within sixty (60) days from the service 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 the order to cease and desist.

Said initial decision, thus adopted by the Commission as its decision, follows:

INITIAL DECISION BY FRANK HIER, TRIAL EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission on March 27, 1951, issued and subsequently served its complaint in this proceeding upon respondents Pennsylvania Oil Terminal, Inc., Douglas Price, Muriel C. Johnson, and Eugene K. Johnson (no service on respondent named as Clara Price), charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. No answers thereto were filed by any respondent. On the date fixed in the complaint, May 22, 1951, a hearing was held at which respondent Douglas Price appeared, individually and as president of the corporate respondent; and respondent Eugene K. Johnson appeared, both without counsel. Thereat they agreed with counsel for the Commission that certain allegations of fact made in the complaint were the facts, and gave testimony at their own request as to certain other allegations, which testimony was duly recorded and filed in the office of the Commission. Although time was allowed therefor no proposed findings of fact were filed. Thereafter, the proceeding regularly came on for final consideration by the trial examiner, theretofore duly designated by the Commission, on the complaint and the testimony, and said trial examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Pennsylvania Oil Terminal, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 3500 Branch Avenue, Silver Hill, Md. Respondent Douglas Price is president of said corporate respondent with his business address the same as that of the corporate respondent. Respondent Eugene K. Johnson formerly was the president of the corporate respondent and presently holds an exclusive franchise to sell corporate respondent's products within a 50 mile radius of Washington, D. C. His office and resident address is Capitol Heights, Md., Post Office Box 118.

There is no person by the name of Clara Price having or having had any connection with the corporate respondent. Florence Price, wife of Douglas Price, is an officer of such corporate respondent, and Muriel

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Clara Johnson, wife of Eugene K. Johnson, is an officer of corporate respondent but neither were or are active in its business nor exercised any control over its policies and practices. The latter have been and are formulated and directed by respondents Douglas Price and Eugene K. Johnson.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of motor oil to retail distributors for resale to the public. Respondents sell said product under the brand name "Penolube Motor Oil."

PAR. 3. Respondents cause and have caused said product, when sold, to be transported from their 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. Respondents maintain and have maintained a course of trade in their product in commerce among and between the various States of the United States. Their volume of business in the sale of said product in commerce has been substantial.

PAR. 4. In the course and conduct of their aforesaid business and for the purpose of inducing the purchase of their said product in commerce, as "commerce" is defined in the Federal Trade Commission Act, the respondents have made and now make certain representations regarding the origin and quality of their oil, in advertisements inserted in trade journals and in other advertising media and on the label of their product. Among and typical of said representations are the following:

Representations in advertising:

PENOLUBE Motor Oil is *not just an ordinary motor oil.*

PENOLUBE carries a high fire and flash and is over 100 VI.

A PREMIUM OIL THAT MEANS *EXTRA PROFITS TO YOU*

Label on product:

Penolube

A High Quality

MOTOR OIL

PENNSYLVANIA OIL TERMINAL, INC.

Main Office

Washington, D. C.

PAR. 5. Through the use of the corporate respondent's name, in conjunction with the word "Penolube," respondents have represented that the lubricating oil packaged and sold by them is refined and processed entirely from oil produced in the Pennsylvania oil field.

PAR. 6. The aforesaid representations were and are false, misleading and deceptive. In truth and in fact, respondents' Penolube oil was not and is not now refined entirely from oil produced in the Pennsylvania oil field, but consists entirely or in substantial part of oil produced in oil fields other than the Pennsylvania field.

PAR. 7. The term "Pennsylvania Oil" is recognized throughout the trade and by a substantial portion of the purchasing public as meaning oil refined from crude oil produced in a geographical area known as the Pennsylvania oil field which includes the western portion of Pennsylvania and contiguous portions of New York, Ohio, and West Virginia. Pennsylvania oil has for some time been well and favorably known to the purchasing public and there is a preference on the part of a substantial portion of the public for such oil over oils refined from crude oil produced in other localities.

PAR. 8. Respondents admit that the corporate respondent's name is misleading and deceptive and that the representations and container labels are likewise misleading and deceptive by reason of the use of the brand name and the name of the corporate respondent together. They contend, however, that the brand name "Penolube" is not of itself misleading or deceptive, because they contend it does not, alone, connote oil derived from crude oil produced in the Pennsylvania field. There is no charge in the complaint that the brand name "Penolube" alone, is false, deceptive or misleading. The charge is confined to the use of both names in conjunction with each other. The finding of fact is likewise similarly confined.

PAR. 9. Respondents' oil consists in whole or in substantial part of used oil obtained from drainings of motor crankcases and from other sources which is thereafter reclaimed or reprocessed. Said oil is sold in containers of the same general size, kind, and appearance as those used for new oil and has the appearance of new and unused oil. The containers bear no markings of any kind indicating that said product is reclaimed or reprocessed oil. In the absence of a disclosure on the containers that the oil therein is reclaimed or reprocessed, the general understanding and belief on the part of dealers and the purchasing public is that oil sold in containers such as are used by respondents is, in fact, new oil and not reclaimed or reprocessed oil. There is a marked preference on the part of a substantial portion of the purchasing public for new and unused oil over used and reclaimed or

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reprocessed oil, such preference being due in part to the belief that new and unused oil is superior in quality to oil that has been used and reclaimed or reprocessed.

PAR. 10. The respondents' said acts and practices further serve to place in the hands of retailers a means and instrumentality whereby such persons may mislead the purchasing public in respect to the origin and quality of respondents' product.

PAR. 11. The use by respondents of the aforesaid false, deceptive and misleading statements and representations with respect to their product and the failure to disclose that their oil is composed in whole or in part of used oil which has been reclaimed or reprocessed, has had and now has, the tendency and capacity to mislead and deceive a substantial number of retailers and members of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and causes and has caused a substantial number of the purchasing public to purchase substantial quantities of respondents' product because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of the respondents, as hereinabove found, are all to the injury and 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

It is ordered, That Pennsylvania Oil Terminal, Inc., a corporation, its officers, employees, agents and representatives, Douglas Price, individually and as an officer of such corporation, and Eugene K. Johnson, their agents, employees and representatives, through any corporate or other device, in connection with the sale, offering for sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of lubricating oil, do forthwith cease and desist from:

1. Using the name "Pennsylvania Oil Terminal, Inc." or any other name containing the word "Pennsylvania" or any abbreviation, derivation or simulation of the word "Pennsylvania" in conjunction with the brand name "Penolube," to designate or describe lubricating oil, any part of which is not derived from crude oil which has been extracted from that portion of western Pennsylvania, and contiguous portions of Ohio, New York, and West Virginia, generally known as the Pennsylvania oil field;

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2. Advertising, selling, or offering for sale, any lubricating oil, which has been previously used for lubricating purposes, without disclosing such prior use to the purchaser or potential purchaser, either directly or by clear and conspicuous appropriate statement to that effect on the container.

It is further ordered, That the complaint be and the same hereby is dismissed as to respondents Clara Price and Muriel C. Johnson.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondents, except Clara Price and Muriel C. Johnson, shall, within sixty (60) days from the service 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 the order to cease and desist [as required by aforesaid order and decision of the Commission].

IN THE MATTER OF
CONTINENTAL RADIO TUBE COMPANY ET AL.

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

Docket 5725. Complaint, Dec. 20, 1949—Decision, Oct. 5, 1951

Many radio repairmen and service dealers are prejudiced against the purchase of war surplus tubes, and have a preference for the current commercial tubes.

As respects the removal of numbers or symbols placed on radio tubes by manufacturers or others for identification, and the substitution by sellers of others, the fact that many of the tubes on which substitute numbers or symbols were placed may have been identical with radio tubes generally so identified is no justification for such incorrect identification.

Where a corporation and its four officers, engaged in the interstate sale and distribution of radio tubes—

- (a) Incorrectly identified tubes purchased by them from the manufacturers or others, by removing the identification numbers or symbols placed thereon and substituting others, and delivered them in commerce as and for the tubes identified in the trade by the substitutions;
- (b) Incorrectly identified war surplus tubes purchased by them by buffing away the service numbers or symbols and substituting therefor commercial numbers or symbols, and causing them to be delivered to their customers in commerce as and for the tubes identified by such commercial numbers or symbols; and
- (c) Falsely represented that they had been licensed by Radio Corporation of America to make or distribute radio tubes, through statements to such effect on cartons packaging their said products;

With capacity and tendency to mislead and deceive the trade and public in said respects and thereby induce purchasers of their said products, and with the result of placing in the hands of the purchasers for resale a means whereby they might pass on incorrectly identified products to the ultimate users:

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.

As respects respondents' objection to the last clause in paragraph one of the proposed modified order, namely, "1. Removing any identification number or symbol placed on radio tubes by the manufacturer thereof or others, and substituting therefor any other number or symbol, or otherwise incorrectly identifying such radio tubes," respondents contending that the order with said clause included is indefinite and uncertain, that it seeks to adjudicate as violations undefined future action of respondents, and that it goes beyond the facts found by the Commission:

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Said objections were held without merit, since the complaint was aimed, among other things, at respondents' practice of incorrectly identifying the radio tubes sold by them, and an order limited in its application to the specific ways in which their tubes had been incorrectly identified in the past would not be adequate to prohibit a continuation or resumption of the practice by some other means.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. Randolph W. Branch for the Commission.

Kia Miller, Baar & Morris, of Chicago, Ill., for respondents.

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 Continental Radio Tube Co., a corporation, P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of the 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 as its charges in that respect as follows:

PARAGRAPH 1. Respondent, Continental Radio Tube Co., is an Illinois corporation and has its principal office and place of business at 1800 Winnemac Avenue, Chicago, Ill. Respondents, P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert and Martin Gaber, are president, vice president, secretary and treasurer, respectively, of the respondent, Continental Radio Tube Co. Said respondents are now, and for several years last past have been, engaged in selling radio supplies. In the course and conduct of said business, respondents use the trade names Concert Master Radio Tube Co., and Premier Radio Tube Co.

Respondents cause said products, when sold, to be transported from their aforesaid place of business to purchasers thereof located in various States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein, have maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondents advertise their said products in trade publications, and sell the bulk of their products to jobbers, retail dealers, and repairmen.

PAR. 3. In the course and conduct of their business as aforesaid, and in promoting the sale of their products, the respondents have en-

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gaged in various deceptive and misleading practices. Among those practices, respondents purchase radio tubes from various sources, remove therefrom the identification number or symbol placed on the tubes by the manufacturer thereof, and substitute, in lieu of said number or symbol, another number or symbol signifying a more expensive tube or a tube of current manufacture. Respondents purchase war surplus tubes, buff away the service marking thereon, and substitute therefor a commercial number or symbol, and stamp thereon the legend "Made in U. S. A., CC." The carton in which respondents package their aforesaid tubes for shipment to the purchasers thereof, are marked by respondents, "Licensed by Radio Corporation of America," or "Licensed by RCA," when in truth and in fact, respondents were never licensed by the Radio Corporation of America.

PAR. 4. By and through the aforesaid acts and practices, the respondents have sold their radio tubes and supplies to the purchasers thereof throughout the United States, who bought said tubes in the erroneous and mistaken belief that said tubes and supplies were correctly marked, and that they were buying current stock of the latest manufacture from a dealer duly licensed by the Radio Corporation of America. By said acts and practices, respondents have also placed in the hands of the purchasers of their tubes for resale, a means or instrumentality whereby said purchasers may and do pass on to the ultimate users of the tubes and supplies incorrectly marked and identified products.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair or deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER REOPENING PROCEEDING AND MODIFYING FINDINGS AS TO THE FACTS
AND ORDER ¹

Pursuant to the provisions of the Federal Trade Commission Act the Federal Trade Commission, on December 20, 1949, issued and subsequently served its complaint in this proceeding upon the respondents, Continental Corporation (incorrectly designated in the complaint as Continental Radio Tube Company), a corporation, and P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said Act. After respondents filed their

¹ See 47 F. T. C. 1277.

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answer to the complaint, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for the respondents and counsel supporting the complaint may be taken as the facts in this proceeding and in lieu of testimony in support of and in opposition to the charges stated in the complaint, and that the said statement of facts may serve as the basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding, counsel having waived presentation of proposed findings and conclusions and oral argument. The trial examiner thereafter filed his initial decision, which, on April 19, 1951, became the decision of the Commission.

Thereafter the Commission, acting upon its own motion, reconsidered its aforesaid decision and, it appearing that said decision is deficient in certain respects and that the public interest may require that this proceeding be reopened and the findings as to the facts and order modified, issued its rule to show cause why the public interest does not require that this proceeding be reopened and the findings as to the facts and order modified in the respects indicated in said rule to show cause. The respondents, in answer to said rule to show cause, objected to the last clause in paragraph 1 of the proposed modified order, contending that the order with said clause included is indefinite and uncertain; that it seeks to adjudicate as violations undefined future actions of the respondents; and that it goes beyond the facts found by the Commission.

Respondents' objections to the proposed modified order are without merit. The complaint in this proceeding was aimed at, among other things, the respondent's practice of incorrectly identifying the radio tubes they sell. An order limited in its application to the specific ways in which their tubes have been incorrectly identified in the past would not be adequate to prohibit a continuation or resumption of the practice by some other means.

The Commission having duly considered the matter and being of the opinion that the public interest requires that this proceeding be reopened and the findings as to the facts and order to cease and desist modified:

It is ordered, That this proceeding be, and it hereby is, reopened for the purpose of modifying the findings as to the facts and order to cease and desist previously issued herein.

It is further ordered, That said findings as to the facts and order to cease and desist be, and they hereby are, modified to read as follows:

MODIFIED FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Continental Corp. (incorrectly named in the complaint as Continental Radio Tube Co.) is an Illinois corporation with its principal office and place of business now at 551-553 West Randolph Street, Chicago, Ill. During all the times mentioned herein, respondent P. D. Jackson was the president, respondent Jacob L. Gaber the vice president, respondent Erwin F. Rempert the secretary and treasurer, of said corporation; and until March 31, 1950, respondent Martin Gaber was its manager to carry out the policies formulated by the officers as to advertising and other operations, and since then has been its vice president and participates in formulation of policies. At the present time, neither P. D. Jackson nor Erwin F. Rempert is in any way connected with such Continental Corporation.

PAR. 2. Respondents, during all the times mentioned herein, were engaged in selling radio supplies, including radio tubes, causing the same, when sold, to be transported from their place of business in the State of Illinois to purchasers thereof in other States and in the District of Columbia, maintaining a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia. In conducting said business, respondents have also used the trade names Concert Master Radio Tube Co. and Premier Radio Tube Co. They have advertised their said products in trade publications and sold the bulk of such products to jobbers, dealers, and repairmen.

PAR. 3. In the course and conduct of their business, and in promoting the sale of their products, respondents have purchased radio tubes from various sources, removed the identification numbers or symbols placed thereon by the manufacturers or by others prior to their acquisition by respondents, and have substituted in lieu thereof other numbers or symbols and delivered them in commerce as and for the tubes which are commonly and usually identified in the trade by the numbers and symbols thus substituted.

Respondents have also purchased war surplus tubes, buffed away the service numbers or symbols thereon, substituted therefor commercial numbers or symbols, and caused them to be delivered to their customers in commerce as and for the tubes which are commonly and usually identified by such commercial numbers or symbols. Thus, a tube originally bearing the Army number "V T-131" is marked and offered commercially by them as "12S.K7." Many radio repairmen and service dealers are prejudiced against the purchase of war surplus tubes, and have a preference for the current commercial tubes.

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Findings

Various cartons used by respondents in packaging their tubes shipped in commerce bear the following:

"Concert Master"
matched
Radio Tubes
Uniformly consistent
Licensed by R. C. A.
Concert Master Radio Tube Co.
Chicago, Ill. U. S. A.

Continental Radio Tubes
Licensed by
Radio Corporation of America

PAR. 4. The numbers or symbols placed on the aforesaid radio tubes by the manufacturers or others prior to their acquisition by the respondents were placed thereon for the purpose of identification, and, although the record herein does not disclose the significance of such numbers or symbols to purchasers, other than that of identification, by removing such identification numbers or symbols and substituting in lieu thereof other numbers or symbols the respondents caused such radio tubes to be incorrectly identified. The fact that many of the radio tubes on which substitute numbers or symbols were placed may have been identical with radio tubes generally so identified, although in some instances they were not, is no justification for such incorrect identification. The war surplus radio tubes from which the respondents removed the service numbers or symbols as aforesaid were also incorrectly identified as current commercial radio tubes. The Commission finds that the acts and practices of the respondents of incorrectly identifying, as aforesaid, radio tubes sold by them are misleading and deceptive.

By the use of the aforesaid statements on cartons in which their radio tubes were packaged for shipment, the respondents represented that they have been licensed by Radio Corporation of America to make or distribute radio tubes. The respondents do not hold, and never have held, any license from Radio Corporation of America, and the aforesaid representations are, therefore, false, misleading, and deceptive.

PAR. 5. The aforesaid acts and practices of respondents have had and now have the capacity and tendency to mislead and deceive the trade and the public as to their radio tubes, inducing purchasers to buy the same in the erroneous and mistaken belief that said tubes were correctly identified by the numbers or symbols appearing thereon, were of current commercial stock, and that the respondents were

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licensed by the Radio Corporation of America to make or distribute radio tubes. By said acts and practices, respondents have also placed in the hands of the purchasers of their radio tubes for resale, a means or instrumentality whereby said purchasers may pass on to the ultimate users thereof incorrectly identified products.

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

MODIFIED ORDER

It is ordered, That the respondent Continental Corporation, a corporation, trading under its own or under any other name, its officers, and the respondents P. D. Jackson, Jacob L. Gaber, Erwin F. Rempert, and Martin Gaber, individually, and their respective agents, representatives, and employees directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radio tubes in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Removing any identification number or symbol placed on radio tubes by the manufacturer thereof or others, and substituting therefor any other number or symbol, or otherwise incorrectly identifying such radio tubes.
2. Removing the service number or symbol from war surplus radio tubes and substituting therefor any other number or symbol, or otherwise representing that such war surplus radio tubes are current commercial tubes.
3. Representing that the respondents have been licensed by Radio Corporation of America to make or distribute radio tubes, or for any other purpose.

It is further ordered, That 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.

Complaint

IN THE MATTER OF
BEN SELVIZ, INC. ET AL.

COMPLAINT, SETTLEMENT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914,
AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5905. Complaint, July 9, 1951—Decision, Oct. 9, 1951

Where a corporation and its two officers, engaged in the manufacture, introduction into commerce, and distribution of wool products as defined in the Wool Products Labeling Act—

Misbranded ladies' coats within the intent and meaning of said act and the rules and regulations promulgated thereunder in that, (1) labeled 100% wool, they contained no "wool" but were composed, exclusive of ornamentation, of "reprocessed wool," together with small amounts of rayon and cotton; and (2) their constituent fibers and the percentages thereof were not shown on the tags or labels thereon as required by said act and rules, etc.:

Held, That such acts and practices, under the circumstances set forth, were in violation of said act and said rules and regulations, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. James A. Purcell*, trial examiner.

Mr. J. M. Doukas and *Mr. C. J. Aimone* for the Commission.

Cohn, Riemer & Pollack, of Boston, Mass., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission, having reason to believe that Ben Selviz, Inc., a corporation and Robert J. Seder and Leonard Freeman, individually and as officers of said corporation have violated the provisions of said acts and the rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ben Selviz, Inc. is a corporation organized and existing under the laws of the Commonwealth of Massachusetts; Robert J. Seder is its president and Leonard Freeman is its treasurer. The individual respondents formulate, direct, and control the policies, acts and practices of the corporate respondent. The office and principal place of business of both corporate respondent and the individual respondents is located at 763 Washington Street, Newtonville, Mass.