

IN THE MATTER OF

MAURICE J. LENETT AND LEONARD STOLZBERG
DOING BUSINESS AS Lenco Spring CompanyCOMPLAINT, DECISION, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5964. Complaint, Mar. 14, 1952—Decision, Jan. 15, 1953*

When articles assembled or manufactured in whole or in part from previously used materials so that they have the appearance of being assembled or manufactured from new and unused materials, are offered to the purchasing public not clearly or conspicuously marked or labeled as assembled or manufactured from used materials, they are readily accepted by members of the purchasing public as assembled or manufactured entirely from new and unused materials.

Where two individuals engaged in assembling automobile springs composed of some new and of some old and previously used parts, and in the interstate sale thereof to dealers in various parts of the United States in substantial competition with concerns engaged in the manufacture and sale in commerce of automobile springs made entirely from new and previously unused parts;

In carrying on their said business in the course of which they purchased old springs theretofore used in any make of car, inspected them for wear, flaws or possible imperfections, assembled five of such old springs with three new springs, together with a new center bolt, new bushings, and a new metal cover, and caused the same to be mechanically wrapped in paper together with certain labeling and markings which included the capital letter "S", in immediate conjunction with certain numerals identical with catalog numbers used by the manufacturers of Chevrolet and Chrysler automobiles, to springs for which makes they confined their output—

- (a) Offered and sold their said springs to dealers with no labeling, marking or designation to indicate to the purchasing public or to dealers that said springs, which were resold to said public with no such disclosure, were assembled in part from old and used parts; and
- (b) In some instances sold to dealers as and for new, such automobile springs which had the appearance of having been assembled or manufactured from new and unused parts;

With the result of thereby placing in the hands of dealers means whereby they might mislead or deceive members of the purchasing public into the erroneous belief that they were buying springs made entirely from new and previously unused parts; and with tendency and capacity to mislead and deceive a substantial portion of said public into the mistaken belief that such springs were new springs assembled entirely from new and unused parts, and thereby induce its purchase of substantial quantities of their said product; whereby substantial trade in commerce was diverted to them from their said competitors, to the injury of competition in commerce :

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

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

Mr. Edward F. Downs for the Commission.

Halfpenny, Hahn & Cassedy, of Washington, D. C., 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 Maurice J. Lenett and Leonard Stolzberg, individuals, doing business as Lenco Spring Company, 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. Respondents Maurice J. Lenett and Leonard Stolzberg are individuals doing business as Lenco Spring Company, with their office and principal place of business at Rear 578 Millbury Street, Worcester, Massachusetts.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the business of assembling automobile springs composed of some new and some old and previously used parts, and the sale thereof to dealers located in various parts of the United States who purchase for resale.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused and now cause their said automobile springs, when sold by them, to be transported from their place of business in the State of Massachusetts to purchasers located in States other than the State of Massachusetts and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said automobile springs in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business of respondents in said commerce is and has been substantial.

PAR. 4. In the course and conduct of their business respondents buy old automobile springs that have been previously used which they disassemble and using certain parts thereof and certain new and previously unused parts assemble complete automobile springs in such a manner that such springs have the appearance of having been assembled or manufactured entirely from new and previously unused parts.

Complaint

49 F. T. C.

PAR. 5. Respondents sell their automobile springs as above described to dealers, who purchase for resale to the purchasing public, without any label, marking or designation stamped thereon or otherwise attached thereto, to indicate to the purchasing public or to the dealers that said automobile springs are assembled in part from old and previously used parts, and such automobile springs are resold to the purchasing public without any disclosure that they are assembled in part from old parts that have been previously used.

In some instances respondents sell such automobile springs to dealers as and for new automobile springs assembled or manufactured entirely from new and previously unused parts.

PAR. 6. When articles which are assembled or manufactured in whole or in part from previously used materials in such a manner that they have the appearance of being assembled or manufactured from new and previously unused materials, are offered to the purchasing public, and such articles are not clearly and conspicuously marked or labeled as having been assembled or manufactured from previously used materials, they are readily accepted by members of the purchasing public as having been assembled or manufactured entirely from new and previously unused materials.

PAR. 7. In the course and conduct of their business respondents have been at all times mentioned herein in substantial competition with individuals, corporations and firms engaged in the business of manufacturing and selling automobile springs manufactured entirely from new and previously unused parts in commerce among and between the various States of the United States.

PAR. 8. By the aforesaid acts and practices, the respondents place in the hands of dealers the means and instrumentalities whereby said dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing automobile springs manufactured entirely from new and previously unused parts, when in fact said springs are composed in part of old and previously used parts.

PAR. 9. The failure of respondents to mark their said springs showing that they contain old and previously used parts 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 the automobile springs sold by them were and are new springs assembled or manufactured entirely from new and previously unused parts, and to induce a substantial portion of the purchasing public to purchase substantial quantities of respondents' automobile

springs because of such erroneous and mistaken belief. As a direct result of the practices of respondents, as aforesaid, substantial trade in commerce has been diverted to respondents from their said competitors and injury has been done to competition in commerce between and among the various States of the United States.

PAR. 10. The acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of the competitors of respondents, and constitute unfair methods of competition and 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 Decision and Order of the Commission dated January 15, 1953, the initial decision of hearing examiner James A. Purcell became on that date the order of the Commission.¹

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 14, 1952, issued and subsequently served its complaint in this proceeding upon respondents, Maurice J. Lenett and Leonard Stolzberg, individuals, doing business as Lenco Spring Company, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answers thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named Hearing Examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, the proceeding regularly came on for final consideration by said Hearing Examiner on the complaint, the answers thereto, testimony and other evidence, proposed findings as to the facts and

¹ Said "Decision," etc., dated January 15, 1953, reads as follows, omitting the formal Order of Compliance, set forth *infra* at page 922.

This matter coming on to be heard by the Commission upon its review of the initial decision of the hearing examiner herein; and

The Commission having considered the entire record and being of the opinion that said initial decision is adequate and appropriate to dispose of the proceeding:

It is ordered, That the initial decision of the hearing examiner, copy of which is attached hereto, shall on the 15th day of January, 1953, become the decision of the Commission.

Findings

49 F. T. C.

conclusions presented by counsel in support of the complaint (none such having been filed by the respondents), oral argument thereon not having been requested; and said Hearing 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, conclusions drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Maurice J. Lenett and Leonard Stolzberg are individuals doing business as Lenco Spring Company, with their office and principal place of business at Rear 578 Millbury Street, Worcester, Massachusetts.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the business of assembling automobile springs composed of some new and some old and previously used parts, and the sale thereof to dealers located in various parts of the United States who purchase for resale.

PAR. 3. In the course and conduct of their business as aforesaid, respondents have caused and now cause their said automobile springs when sold by them, to be transported from their place of business in the State of Massachusetts to purchasers thereof located in States other than the State of Massachusetts and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said automobile springs in commerce as "commerce" is defined in the Federal Trade Commission Act. The volume of business of respondents in said commerce is and has been substantial, to wit, for the years 1949, \$35,000.00; 1950, \$108,000.00; and 1951, \$274,000.00.

PAR. 4. In the course and conduct of their business respondents buy old automobile springs, that have been previously used, which they disassemble and, using certain parts thereof, combined with certain new and previously unused parts, assemble complete automobile springs in such a manner that the springs thus assembled or produced have the appearance of having been assembled or manufactured entirely from new and previously unused parts.

The methods or processes employed by respondents are specifically as follows: All springs are of the semi-elliptic type for automobile usage; respondents purchase old springs theretofore used in any make of automobile, regardless of the year of manufacture, transport same to their premises where the center bolt is broken open, all leaves taken therefrom, inspected for wear, flaws or possible imperfections and those found acceptable after testing are cut to the measurement of the type spring sought to be produced; in assembling respondents pro-

vide a new main leaf (i. e. the top or longest leaf in the assembly), adaptable for use on the particular automobile for which the spring is intended, and also a bottom leaf (i. e. the shortest leaf in the assembly), and at times, where necessary, add a third leaf so that the spring as finally sold consists of five old or reclaimed leaves and three replacements. Also supplied are a new center bolt and new bushings, and the assembly, having been painted, is encased in a new metal cover. The center bolt, replaced leaves as aforescribed, bushings and the metal cover are the only new parts, all others having been previously used. Thereafter, the springs are mechanically wrapped in paper, labeled and ready for the market. Respondents confine their output to springs for Chevrolet and Chrysler automobiles.

Upon leaving the hands of respondents there is nothing on the springs proper, or attached thereto, which would indicate that previously used parts had entered into the product; that affixed by glue to the paper wrapper encasing the spring is a label which bears the capital letter "S" in immediate conjunction with certain numerals, such numerals being identical with those used by the manufacture of Chevrolet and Chrysler automobiles to indicate the catalog numbers of their springs to be used as replacement parts; the aforesaid letter "S," respondent Lenett testified, indicates "substitute" and that this, coupled with respondents' catalog, is sufficient to apprise the ultimate consumer, i. e. the owner of the automobile on which the spring is installed, although such catalogs are placed only with automobile dealers, repairers, garage mechanics and the like, but have no general distribution or circulation to the public; upon the direct question to respondent Lenett as to whether or not he had any assurance that such information was passed on by his customers to the ultimate consumer, replied that this was a matter "over which he had no control."

PAR. 5. Respondents sell their automobile springs to dealers who purchase for resale to the purchasing public, without any label, marking or designation stamped thereon or otherwise attached thereto, to indicate to the purchasing public or to dealers that said automobile springs are assembled in part from old and previously used parts, and such automobile springs are resold to the purchasing public without any disclosure that they are assembled in part from old parts that have been previously used.

In some instances respondents sell such automobile spring to dealers as and for new automobile springs assembled or manufactured entirely from new and previously unused parts. A specific instance of such was testified to by an automobile dealer who purchased several dozen springs under the impression they were new because of appearance and the further fact they bore the automobile manufacturer's replacement

Findings

49 F. T. C.

part number, and that he sold them to his customers as new, but sometimes later learned the true facts when, because of a complaint he made to respondents, a representative of the latter contacted him and imparted the true facts; this witness was never told by respondents or their representatives that the springs were new nor was he initially informed that they were rebuilt. Witness had been selling springs for eight years but could not "tell" that respondents' springs were other than new. Subsequent to being advised of the facts witness has continued to purchase from respondents but now informs his customers of the truth.

Another Chevrolet automobile dealer, who also dealt in automobile parts, including springs, purchased from respondents twelve springs which were represented as new springs. Discovery was subsequently made upon his attention being called by one of respondents' competitors; witness made discovery prior to selling to his customers and thereafter disposed of the springs with full disclosure; that said springs bore nothing to indicate they were reclaimed or rebuilt but on the contrary bore a number identical with the automobile manufacturer's replacement part number for a genuine new spring.

PAR. 6. When articles which are assembled or manufactured in whole or in part from previously used materials in such a manner that they have the appearance of being assembled or manufactured from new and previously unused materials, are offered to the purchasing public, and such articles are not clearly and conspicuously marked or labeled as having been assembled or manufactured from previously used materials, they are readily accepted by members of the purchasing public as having been assembled or manufactured entirely from new and previously unused materials.

PAR. 7. In the course and conduct of their business respondents have been at all times mentioned herein in substantial competition with individuals, corporations and firms engaged in the business of manufacturing and selling automobile springs, made entirely from new and previously unused parts, in commerce among and between the various States of the United States.

PAR. 8. By the aforesaid acts and practices, the respondents place in the hands of dealers the means and instrumentalities whereby said dealers may deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing automobile springs manufactured entirely from new and previously unused parts, when in fact said springs are composed partially of old and previously used parts.

PAR. 9. The failure of respondents to mark their said springs showing that they contain old and previously used parts 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 the automobile springs sold by them were and are new springs assembled or manufactured entirely from new and previously unused parts, and to induce a substantial portion of the purchasing public to purchase substantial quantities of respondents' automobile springs because of such erroneous and mistaken belief. As a direct result of the practices of respondents, as aforesaid, substantial trade in commerce has been diverted to respondents from their said competitors and injury has been done to competition in commerce between and among the various States of the United States.

The respondents, to maintain the issues on their part joined, offered testimony and evidence which may be fairly and fully summarized as follows: That their product is meritorious and of "much higher value than 'rebuilt' springs"; they described their methods of production; explained in detail, and compared, the relative value of "refashioned," "rebuilt" and "remanufactured" springs (none of which types of springs are here in issue), with particular emphasis on the value of "butt-cut" leaf ends (the type used in respondents' product), over that of the "tapered" leaf (being the type used by manufacturers of automobiles as original equipment); that to those initiated in, or familiar with, the mechanics and construction of automobiles, the respondents' product would be recognizable as something other than new or original equipment; that their springs are superior to original equipment and that the replacements which respondents have had to make good under their guarantee, because of failure of their springs, has been negligible; that respondents have never represented to any purchaser that their springs were new or original equipment nor have they ever authorized another to make such representations on their behalf, nor have such representations been ever made with the approval of respondents. Thereupon the respondents rested.

Careful consideration and analysis of all of the foregoing offered by way of defense, fails wholly to sustain an adequate defense to any of the charges of the complaint, nor to render untenable any of the findings of fact hereinabove found, or the conclusion hereinafter arrived at on the basis of such findings.

CONCLUSION

The acts and practices of respondents, as herein found are all to the prejudice and injury of the public and of the competitors of respondents, and constitute unfair methods of competition and unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER

It is ordered, That respondents Maurice J. Lenett and Leonard Stolzberg, individually and doing business as Lenco Spring Company, or doing business under any other name or names, jointly or severally, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of automobile springs in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale, selling or delivering to others for sale to the public, any automobile spring which is composed in whole or in part of previously used parts unless a disclosure that said automobile spring is composed, in whole or in part, as the case may be, of previously used parts, is permanently stamped or fixed on each such automobile spring in a clear and conspicuous manner and in such location as to be clearly legible to the purchaser thereof, and unless there is plainly printed or marked on the box, carton, wrapper or other container in which said automobile spring is sold or offered for sale, a notice that said automobile spring is composed, in whole or in part, as the case may be, of previously used parts.

2. Representing, by failure to reveal or otherwise, that an automobile spring composed in whole or in part of previously used parts is composed entirely of new and previously unused parts.

ORDER TO FILE REPORT OF COMPLIANCE

It is further ordered, That the respondents, Maurice J. Lenett and Leonard Stolzberg, 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 decision and order of January 15, 1953].

Syllabus

IN THE MATTER OF
STANDARD OIL COMPANY

COMPLAINT, MODIFIED FINDINGS AND ORDER, AND DISSENTING OPINIONS
IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN
ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT AP-
PROVED JUNE 19, 1936

Docket 4389. Complaint, Apr. 23, 1941¹—Decision, Jan. 16, 1953²

In dealing with the question as to whether or not the granting or continuing of certain alleged discriminatory prices, done pursuant to and in accordance with the seller's general policy, was in good faith to meet the equally low price of a competitor within the meaning of Sec. 2 (b) of the Clayton Act as amended: the Commission believes that consideration cannot be confined to such specific offers as may have been made by competitors, but must also include the setting and general conditions under which such offers were made.

In the aforesaid connection it was noted that the particular seller—which had had long experience in the sale and distribution of the product involved; was thoroughly familiar with the costs of operating retail service stations and bulk plants and the margins of gross profits available, and with the competitive results which might be expected when some retailers received lower prices than competing retailers; and which knew or had the means of knowing and should have known that the manner in which it priced and sold its products continually created the possibility of injury to competition between retailers who bought the product at different prices and resold it in competition with one another; that the price differences it granted could not be justified on the basis of differences in the cost of manufacture, sale and delivery resulting from differing methods or quantities in which its product was sold or delivered—took no action at the time the Robinson-Patman amendment to the Clayton Act became law, to review its pricing policy and bring it into conformity with the new statute, in accordance with the duty and obligation thereby imposed upon it, and made no bona fide attempt to do so.

Section 2 (b) of the statute, in the Commission's view, does not contemplate justifications being made for a method of pricing as exemplified by individual instances of price discrimination made pursuant to such pricing method which were not the result of departures from a nondiscriminatory price scale made to meet lower prices of competitors but represented only the continued application of the pricing standard previously adopted by the seller

¹ Amended.

² Findings and order are published as modified following the decree of the Court of Appeals for the Seventh Circuit on February 14, 1951, vacating and setting aside its former judgment and remanding the case to the Commission to make findings in conformity with the opinion of the Supreme Court on January 8, 1951, in *Standard Oil Co. v. Federal Trade Commission*, 340 U. S. 231. The original findings and order are reported in 41 F. T. C. 263 and the order as modified by the Commission on August 9, 1946, is reported in 43 F. T. C. 56.