

Complaint

IN THE MATTER OF
RA-PID-GRO CORPORATION ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6267. Complaint, Dec. 2, 1954—Decision, Feb. 8, 1955*

Consent order requiring a corporate seller in Dansville, N. Y., to cease misrepresenting in advertising the effectiveness on plants, shrubs, and trees of its "Ra-Pid-Gro" chemical fertilizer, the economy afforded by its use, and its superior quality as compared with other fertilizers.

Before *Mr. Earl J. Kolb*, hearing examiner.
Mr. William L. Pencke 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 Ra-Pid-Gro Corporation, a corporation, and Thomas P. Reilly, individually and as an officer 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:

PARAGRAPH 1. Ra-Pid-Gro Corporation is a corporation, organized and existing under the laws of the State of New York. The principal office and place of business of said respondents in 88 Ossian Street, Dansville, New York.

Individual respondent Thomas P. Reilly is president of corporate respondent. He formulates the policies and directs and controls the practices and activities of said respondent.

PAR. 2. For more than two years last past, said corporate respondent has been and is now engaged in the sale and distribution of a chemical fertilizer, designated Ra-Rip-Gro, designed to be used as a liquid fertilizer by the addition of water.

When sold, respondent Ra-Pid-Gro Corporation ships said product to purchasers thereof located in various States of the United States other than the State of New York. Said respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in commerce in said product.

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PAR. 3. In the course and conduct of said business and for the purpose of inducing the purchase of said product, respondents have made and are now making many statements and representations concerning said product by means of advertisements inserted in newspapers and magazines having a national circulation, and by pamphlets, folders, and other advertising material distributed by respondents and their dealers in various States of the United States. Typical, but not all inclusive of such representations, are the following:

Ra-Pid-Gro was * * *

First to combine a complete formula for the feeding of all trees and plants.

Ra-Pid-Gro contains all the known chemical trace elements, and vitamins necessary for growth and production, and for vigorous, healthy plant life.

First to put up a complete fertilizer or plant food in highly concentrated form without a filler.

Fed regularly as directed, your plants will thrive and grow under the most adverse conditions, when others are stunted, shriveling and dying.

You get results that can't be matched by any other fertilizer or plant food.

Ra-Pid-Gro is a miracle working concentrated food that helps nature, bring out the best in your flowers, fruits, vegetables and ornamental tree.

Ra-Pid-Gro insures success, for it speeds up production and assures an abundant crop.

Saves dying trees, shrubs, many plants given up for dead will respond to applications of Ra-Pid-Gro.

Save all your trees, shrubs and plants by dipping them in a solution of Ra-Pid-Gro before planting.

Some chemicals in solid form dissolve immediately. Others require months in which to dissolve. Therefore at no time is a plant getting a balanced diet from the usual dry fertilizer. The answer is liquid fertilizer—composed, not of one chemical or a few chemicals, but all the required chemicals and trace elements.

Ordinary fertilizers need rain or artificial watering to make them available to plant life.

All trees and plants require a liquid diet. It is impossible for them to feed on solids.

Ra-Pid-Gro obsoletes former fertilizing methods.

First to germinate grass in four days.

Use any quantity on foliage and roots—it won't burn.

Ra-Pid-Gro costs less.

One pound of Ra-Pid-Gro makes 176 lbs. of liquid fertilizer.

One pound of Ra-Pid-Gro is the equivalent of 100 pounds of any other fertilizer you may have used in the past.

One pound of Ra-Pid-Gro (at \$1.25) is the equivalent of 100 pounds of regular powder fertilizer (at \$4.25).

Ra-Pid-Gro is 100% usable by plants.

Every bit is 100% plant food and when applied in solution it is immediately absorbed by plant roots.

Ra-Pid-Gro applied to foliage enters the sap stream at once supplying immediately a complete, balanced food formula.

Ra-Pid-Gro combines in proper proportions the vitamins necessary for human, animal or plant life. By feeding it to your vegetable garden, you not only benefit your vegetables, but you thereby help overcome the deficiencies in your own diet.

PAR. 4. By means of the foregoing representations and many others similar thereto but not specifically set out herein, respondents represent, directly or by implication:

1. That Ra-Pid-Gro is a complete chemical fertilizer, containing all known chemical trace elements and vitamins necessary, for growth, production and feeding of all trees and plants;
2. That when Ra-Pid-Gro is fed regularly to plants they will thrive and grow under the most adverse conditions, while plants not so treated will shrivel and die;
3. That results are obtained through the use of Ra-Pid-Gro that are superior to any other fertilizer;
4. That when trees, shrubs and plants are dipped in Ra-Pid-Gro before planting their growth is assured and when given up for dead, will be saved through applications of Ra-Pid-Gro;
5. That plants do not receive a balanced diet through the use of dry fertilizer;
6. That all plant food must be in liquid form before it can be utilized by plants and trees;
7. That respondents' product has made all other fertilizing methods obsolete;
8. That Ra-Pid-Gro will cause grass to germinate in less time than all other fertilizers;
9. That Ra-Pid-Gro will not burn any plant, regardless of the quantity applied;
10. That Ra-Pid-Gro is cheaper than dry fertilizers and that one pound thereof makes 176 pounds of liquid fertilizer, is equal to 100 pounds of any other fertilizer and at the price of \$1.25 is the equivalent of 100 pounds of dry fertilizer costing \$4.25;
11. That Ra-Pid-Gro when dissolved and applied to plant leaves is absorbed immediately in the sap stream of the plant;
12. That Ra-Pid-Gro in solution is 100% plant food;
13. That Ra-Pid-Gro contains all of the vitamins necessary for human and animal life and when used on gardens, the vitamin content of the food grown therein will be increased to the extent that its consumption will help overcome vitamin deficiencies.

PAR. 5. In truth and in fact:

1. Ra-Pid-Gro is not a complete chemical fertilizer for the feeding of trees and plants as there are trace elements, other than those con-

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tained in said product which are required for tree and plant growth. Moreover, some soils are so deficient in the trace elements present in respondents' product that the amounts therein are not sufficient to supply the deficiencies. Vitamins are not necessary for growth, production or feeding of trees or plants.

2. The regular application of Ra-Pid-Gro will not cause plants to grow under the most adverse conditions as there are many conditions which retard or prevent the growth of plants or cause them to shrivel and die, other than the absence of fertilizer.

3. There are other fertilizers or plant foods that will produce as satisfactory results as Ra-Pid-Gro.

4. There is no assurance that trees, shrubs or plants, which are dipped in Ra-Pid-Gro, will grow. Growth is dependent upon their condition and there are many conditions which will prevent the growth of plants having no relation to the question of fertilization. Plants given up for dead may or may not be saved by the application of respondents' product depending upon the cause of their condition. Only in case their condition is due to a lack of fertilization and they can be saved by the application of fertilizer, can they be saved by the application of Ra-Pid-Gro.

5. Some dry fertilizers contain the same ingredients as are present in respondents' product and will, in the presence of sufficient moisture supplied by rain or irrigation, provide a balanced diet to plants.

6. It is true that all commercial plant food, including that of respondents, require moisture in order to be made available to plants and trees. Respondents' product is mixed with water before application. In the case of dry plant foods the water is applied after application either by rain or irrigation. There is no significant difference in the utilization of the ingredients in the two forms of plant food under these conditions.

7. Ra-Pid-Gro does not make other fertilizing methods obsolete.

8. There are other commercial fertilizers which, when properly applied and supplied with sufficient moisture, will germinate grass in as short a time as respondents' product.

9. Unless used strictly as directed, respondents' product may burn the leaves of plants and the roots of young and tender plants.

10. Based upon the amount of food available to plants, Ra-Pid-Gro does not cost less than other commercial fertilizers. One pound of Ra-Pid-Gro does not make 176 pounds of liquid fertilizer as practically all of the 176 pounds is water and water is not a fertilizer. One pound of Ra-Pid-Gro is not the equivalent of 100 pounds of all other fertilizers.

11. Not all of the ingredients in Ra-Pid-Gro are absorbed by foliage and there are some plants whose foliage will absorb only a negligible amount of the solution.

12. Ra-Pid-Gro in solution is not 100% plant food as the solution consists principally of water which is not a plant food.

13. Respondents' product does not contain all of the vitamins necessary for human or animal life. The vitamins in respondents' product will not increase the vitamin content of vegetables grown in soil to which its said product has been applied and the consumption of food grown in soil to which said product has been applied will not help overcome vitamin deficiencies.

PAR. 6. Respondents, Ra-Pid-Gro Corporation, a corporation, and Thomas P. Reilly, individually and as an officer of said corporation, in the conduct of said business, have been and are in substantial competition in commerce with other corporations and with individuals, partnerships and others engaged in the sale of fertilizers.

PAR. 7. The use by respondents of the foregoing false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that such representations were and are true and into the purchase of substantial quantities of respondents' product because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted and is now being diverted to respondents from their competitors in commerce and substantial injury has been and is being done to competition in commerce.

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 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 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 February 8, 1955, the initial decision in the instant matter of hearing examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

The complaint in this proceeding charges the respondents, Ra-Pid-Gro Corporation, a corporation, and Thomas P. Reilly, an individual

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and as an officer of said corporation, with unfair methods of competition and unfair and deceptive acts and practices in violation of the Federal Trade Commission Act, in the advertising of a chemical fertilizer, designated Ra-Pid-Gro.

In lieu of submitting an answer to said complaint, respondents entered into a stipulation for a consent order with counsel in support of the complaint, which was duly approved by the Director and Assistant Director of the Bureau of Litigation. This stipulation covers all the charges of the complaint except the allegation of falsely representing that Ra-Pid-Gro is a complete chemical fertilizer. It is now conceded by the attorneys supporting the complaint that the representation that Ra-Pid-Gro is a complete chemical fertilizer is not misleading as that term is understood by the fertilizer trade.

By the terms of said stipulation the respondents admitted all the jurisdictional allegations set forth in the complaint, waiving hearing before the hearing examiner or the Commission, the filing of exceptions or oral argument before the Commission and all further and other procedure before the hearing examiner and the Commission to which respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission. In said stipulation the respondents further agreed that the order hereinafter set forth shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived any and all right, power and privilege to challenge or contest the validity of said order.

It was further provided that said stipulation, together with the complaint, shall constitute the entire record herein; that the order hereinafter set forth may be entered in disposition of this proceeding without further notice; that the complaint herein may be used in construing the terms of said order which may be altered, modified or set aside in the manner prescribed by statute for orders of the Commission.

The Hearing Examiner having considered said stipulation for consent order, and being now duly advised in the premises, hereby accepts said stipulation for consent order and issues the following order in conformity therewith:

ORDER

It is ordered, That the respondent corporation, Ra-Pid-Gro Corporation, a corporation, and its officers, and Thomas P. Reilly, individually and as an officer of said corporation, and said respondents' 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

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Trade Commission Act, of the chemical fertilizer designated Ra-Pid-Gro, or any other product containing substantially the same ingredients or possessing substantially the same properties, do forthwith cease and desist from representing, directly or by implication:

1. That Ra-Pid-Gro contains all of the known trace elements necessary for the growth production or feeding of trees or plants.

2. That vitamins are necessary for the growth, production or feeding of trees or plants.

3. That application of Ra-Pid-Gro will cause plants to grow under any circumstances other than a lack of fertilizer.

4. That other fertilizers or plant foods will not produce as satisfactory results as Ra-Pid-Gro.

5. That the dipping of trees, shrubs or plants in Ra-Pid-Gro before planting will assure growth.

6. That plants given up for dead will be saved by applying Ra-Pid-Gro, except in the case of plants that can be saved through the application of a fertilizer.

7. That dry fertilizers do not provide a balanced diet to plants.

8. That a fertilizer must be applied in liquid form in order that plants may utilize the ingredients.

9. That Ra-Pid-Gro makes other fertilizing methods obsolete.

10. That Ra-Pid-Gro causes grass to germinate in a shorter time than all other commercial fertilizers.

11. That the application of Ra-Pid-Gro will not burn plants unless expressly limited to its use as directed.

12. That Ra-Pid-Gro costs less than other commercial fertilizers.

13. That one pound of Ra-Pid-Gro makes 176 pounds of liquid fertilizer or any other amount that is in excess of the actual amount of fertilizer present.

14. That one pound of Ra-Pid-Gro is equivalent to 100 pounds of other fertilizer or to any other number of pounds that is contrary to the fact.

15. That all of the ingredients in a solution of Ra-Pid-Gro are absorbed when spray on foliage or that the foliage of all plants will absorb significant amounts of the solution.

16. That Ra-Pid-Gro contains all the vitamins necessary for human or animal life or that the consumption of food produced on soil to which said product has been applied will help overcome vitamin deficiencies because of such application.

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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 February 8, 1955].

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IN THE MATTER OF
CROWN ZELLERBACH CORPORATION ET AL.

Docket 5421. Complaint, Feb. 13, 1946—Order, Feb. 9, 1955

Order of dismissal—following Supreme Court's reversal in the *Automatic Canteen Company of America* case—of complaint charging a manufacturer of paper and paper products and its two subsidiaries, with offices in California, with violating sec. 2 (f) of the Clayton Act as amended by refusing to purchase paper and paper products from sellers unless they were granted prices lower than those paid by their competitors, thus accepting and receiving prohibited discriminations in price.

Before Mr. Everett F. Haycraft, hearing examiner.

Mr. Edward S. Ragsdale and Mr. Cecil G. Miles for the Commission.

Mr. Philip S. Ehrlich, Mr. Albert A. Axelrod, Mr. Ricardo J. Hecht, Mr. Philip S. Ehrlich, Jr. and Mr. Irving Rovens, of San Francisco, Calif., Mr. Paul R. Harmel, of Washington, D. C., and Sawyer & Marion, of New York City, for respondents.

ORDER DISMISSING COMPLAINT

This matter having come on to be heard by the Commission upon its review of the hearing examiner's initial decision herein and upon respondents' appeal from said initial decision, and upon briefs and oral argument of counsel; and

It appearing to the Commission that the decision of the Supreme Court of the United States in the matter of *Automatic Canteen Company of America v. Federal Trade Commission*, 346 U. S. 61 (1953), and the dismissal by the Commission of Count II of the complaint in the matter of *Automatic Canteen Company*, Docket No. 4933 (January 12, 1955),¹ as a result of said decision, require that the complaint in this proceeding be dismissed:

It is ordered, That the complaint herein be, and it hereby is, dismissed.

Commissioner Mead dissenting and Commissioner Howrey not participating.

¹ See p. 574 *supra*.

IN THE MATTER OF

PERMANENT STAINLESS STEEL, INC., AND PRESSED
STEEL CAR COMPANY, INC. (NOW KNOWN AS U. S.
INDUSTRIES, INC.)ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6010. Complaint, July 17, 1952—Decision, Feb. 14, 1955*

Order requiring a manufacturer of stainless steel cooking utensils with general offices in Chicago, and its corporate sales agent in Houston, Tex., to cease representing falsely—chiefly by means of demonstrations of said products before groups of prospective buyers at which time advertising matter supplied by the manufacturer was distributed—that the consumption of food cooked or kept in aluminum utensils would cause cancer and was hazardous to health, and that preparation of food in aluminum caused formation of dangerous poisons; that use of their utensils would promote and insure better health, was necessary to health, would prevent gallstones and stomach troubles and help build up a good digestive system; and to cease making false representations concerning the therapeutic effects of various mineral elements in the diet.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. R. P. Bellinger and *Mr. Joseph Callaway* for the Commission.

Hamblen & Bobbitt, of Houston, Tex., and *Patterson, Belknap & Webb*, of New York City, for Permanent Stainless Steel, Inc.

Olvine, Connelly & Chase, of New York City, and *Steptoe & Johnson*, of Washington, D. C., for U. S. Industries, Inc.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint in this proceeding charges the two respondents with making false representations and disparaging statements relative to aluminum cooking ware, in connection with the sale and distribution of stainless steel cooking utensils, in violation of the Federal Trade Commission Act. Subsequent to the submission of respondents' answers and the receiving of evidence in support of and in opposition to the allegations of the complaint, a stipulation as to the facts was entered into by and between counsel for respondents and counsel supporting the complaint.

Under the terms of this stipulation all the factual issues in controversy are resolved except that pertaining to the responsibility of respondent Pressed Steel Car Company, Inc. for the false representations and disparaging statements made orally by the salesmen em-