

Complaint

IN THE MATTER OF

ELVIN P. COURANT TRADING AS
COURANT DISTRIBUTING COMPANYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 5867. Complaint, Mar. 27, 1951—Decision, June 20, 1956*

Order dismissing, as not supported by substantial evidence, complaint charging a seller with false advertising concerning its "Sav-A-Battery" treatment or conditioner for automotive storage batteries.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Jesse D. Kash and *Mr. William M. King* for the Commission.

Mr. R. H. Moore, and *Reeder, Gisler & Griffin*, of Kansas City, Mo., and *Wheeler & Scoutt*, of Washington, D. C., for respondent.

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 Elvin P. Courant, an individual trading as Courant Distributing Company, hereinafter referred to as respondent, has 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. The respondent Elvin P. Courant is an individual trading as Courant Distributing Company having his principal office and place of business located at Nowata, Oklahoma.

PAR. 2. Respondent is now and for more than two years last past has been engaged in the sale and distribution of a product represented as a treatment or conditioner for automotive storage batteries. Said product is designated "Sav-A-Battery."

The formula for said product according to information supplied by respondent is as follows:

29% Magnesium
70% Sodium sulfate
1% Trisodium phosphate

An analysis of the product shows the ingredients to be as follows:

13.2% Magnesium sulfate
75.0% Sodium sulfate

Complaint

52 F. T. C.

1.4% Trisodium phosphate
0.7% Sodium carbonate

PAR. 3. Respondent causes said product when sold by him to be transported from his aforesaid place of business in the State of Oklahoma to purchasers located in various other States of the United States, and maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States. His volume of business in such commerce has been substantial.

PAR. 4. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said product, respondent has made many claims and representations concerning said product in advertisements inserted in trade journals, in sales literature, circulars, testimonials, on labels and in other advertising matter. Among and typical of such claims and representations are the following:

TERRIFIC MONEY-MAKER!

A battery chemical that ends recharging! Adds years of satisfactory service to battery! Simply put SAV-A-BATTERY into each cell of battery, that's all there is to do. It prevents sulphation which causes 90% of battery failures. Makes lights whiter and brighter, lets driver use radio without fear of battery trouble. SAV-A-BATTERY also may be used with amazing results in used batteries as well as new ones.

8 REASONS WHY
CAR OWNERS BUY
SAV-A-BATTERY

- | | |
|-----------------------------|-------------------------|
| 1. Insures Quicker Starting | 5. Reduces Recharging |
| 2. Increases Power | 6. Prevents Overheating |
| 3. Prolongs Battery Life | 7. Non-Injurious |
| 4. Gives Brighter Lights | 8. Fully Guaranteed |

SAV-A-BATTERY chemical is amazing in its action—it actually doubles the efficiency of new batteries and restores life to used batteries. Makes them last longer. Because of its remarkable effect, it does away with battery troubles almost entirely—it eliminates bothersome 'dead' batteries and saves recharging bills. SAV-A-BATTERY never fails, always performs! Through long period tests, this unusual battery chemical has been perfected and proven! It's action is due to the combination of the chemical with battery sulphuric acid which forms a new and extra-efficient electrolyte, thus reducing battery failures to a minimum. Lights are whiter and brighter and driver can use radio safely when SAV-A-BATTERY is at work! It can easily be added to any sulphuric acid battery, old or new!

PAR. 5. Through the use of the foregoing statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent represented, directly or by implication, that the use of his product, as directed, in lead acid storage

batteries will end recharging of batteries; that it will add years of satisfactory service to a battery; that it will prevent sulphation in the battery; that it will make automobile lights whiter and brighter; that it is effective in used batteries as well as new batteries; that its use will insure quicker starting, increased power, prolonged battery life, and will prevent overheating of battery; that it will double the efficiency of new batteries, restore life to used batteries and eliminate dead batteries.

PAR. 6. In truth and in fact, respondent's product under either of the formulae hereinabove set out, when used as directed or in any other manner, has no beneficial effect in the preservation, operation or maintenance of lead acid storage batteries. The claims made for said product by respondent in his advertising and particularly set out above are consequently false, misleading and deceptive.

PAR. 7. The use by the respondent of the foregoing false, misleading and deceptive statements and representations had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and to induce the public to purchase substantial quantities of respondent's product as a result of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

OPINION OF THE COMMISSION

Per Curiam:

This matter is before the Commission upon appeal by the respondent from the hearing examiner's initial decision. The Commission is of the opinion that the issues raised by this appeal are substantially the same as those decided *In the Matter of Pioneers, Inc., et al.*, Docket No. 6190. We find here that the decision of the hearing examiner is not supported by reliable, probative, and substantial evidence of record.

Accordingly, upon the basis of our review of the whole record herein, respondent's appeal is granted and the complaint dismissed for failure of proof. This disposition of the case renders it unnecessary for us to rule more specifically on the respondent's exceptions to the initial decision.

Commissioner Kern did not participate in the decision of this matter.

Order

52 F. T. C.

ORDER DISMISSING COMPLAINT

This matter having come on to be heard by the Commission upon the respondent's appeal from the hearing examiner's initial decision and briefs in support of and in opposition to said appeal; and

The Commission having determined that the allegations of the complaint are not supported by substantial evidence and having set forth its reasons therefor in the accompanying written opinion:

It is ordered, That the respondent's appeal from the hearing examiner's initial decision be, and it hereby is, granted.

It is further ordered, That the initial decision be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

Commissioner Kern not participating.

Findings

IN THE MATTER OF
HENRY ROSENFELD, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (d) OF
THE CLAYTON ACT

Docket 6212. Complaint, June 14, 1954—Decision, June 21, 1956

Order requiring a New York City distributor of women's suits and dresses to retailers throughout the United States, with annual sales exceeding \$10,000,000 in 1949-1951, to cease discriminating in price in violation of Sec. 2(d) of the Clayton Act, by making to some of its customers promotional allowances amounting to 50% of the retailer's local advertising costs up to \$1.00 per garment in connection with the resale of its dresses, while not making such credits or payments available to all other competing customers.

Mr. Peter J. Dias for the Commission.

Marshall, Bratter, Klein, Greene & Option, of New York City, for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Complaint herein was issued June 14, 1954, charging respondents with making promotional payments to aid in the resale of respondents' dresses to some of their customers but not making such payments available on proportionally equal terms to all of respondents' customers competing in the distribution of respondents' products in violation of Section 2 (d) of the Clayton Act (U.S.C., Title 15, Sec. 13). Respondents' answer admitted jurisdictional and descriptive facts alleged, denied violation and pleaded meeting competition in good faith as an affirmative defense.

After five hearings in New York, Philadelphia and Washington, counsel for proponent rested and counsel for respondents moved to dismiss, asserting insufficiency of the record to constitute a prima facie case of the violation charged, which motion, after briefing, was denied by the hearing examiner. Thereafter, four more hearings in New York City completed respondents' defense and proof taking was closed on June 30, 1955. Thereafter, Proposed Findings of Fact and Conclusions were filed by all counsel and the case closed on August 24, 1955. Upon consideration of the entire record herein and from his observation of the witnesses, the hearing examiner makes the following:

FINDINGS OF FACTS

1. Respondent, Henry Rosenfeld, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the