

Order

IN THE MATTER OF

E. F. DREW & CO., INC.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6126. Order, August 30, 1956*

Order modifying, as requested by the Commission and so as to accord with the decision of the Court of Appeals for the Second Circuit of July 13, 1956, the order to cease and desist of May 5, 1955, 51 F.T.C. 1056, prohibiting representations that oleomargarine was a dairy product.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. Joseph Callaway for the Commission.

Mr. Samuel J. Loewenstein, of New York City, for respondent.

MODIFIED ORDER TO CEASE AND DESIST

This matter having been heard by the Commission on appeal from the initial decision and order of the examiner, on briefs and oral argument of counsel; and, the Commission having duly considered the record and the questions raised on appeal, and having thereafter, on the 5th day of May, 1955, rendered its decision in which it modified and as modified affirmed the findings of the examiner, the Commission issued its order modifying the initial decision and the order of the examiner, so as to conform with its decision; and, as modified, issued the order to cease and desist against respondent, its officers, agents, representatives and employees; and,

Respondent having filed in the United States Court of Appeals for the Second Circuit its petition for review of and to set aside said order to cease and desist; and the Court having heard the cause on briefs and oral argument, including the request of the Commission that the Court modify the order to cease and desist by striking therefrom the following language in the proviso to Paragraph 1 thereof: "or a truthful statement that said product contains butter or any other dairy product provided the percentage thereof contained is clearly and conspicuously set forth"; and the Court having thereafter, on the 13th day of July, 1956, filed its decision in which it affirmed and sustained the findings and conclusions of the Commission, modified the aforesaid order to cease and desist as requested by the Commission and affirmed said order as modified; and

The Commission being of the opinion that its aforesaid order to cease and desist, issued on May 5, 1955, should be modified so as to accord with the decision of the United States Court of Appeals for

Order

13 F.T.C.

the Second Circuit modifying the said order to cease and desist as aforesaid:

It is ordered, That respondent, E. F. Drew & Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of oleomargarine or margarine do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains:

The terms "churned to delicate, sweet creamy goodness," "country fresh," or "* * * the same day-to-day freshness which characterizes our other dairy products," or any other statement, word, grade designation, design, device, symbol, sound, or any combination thereof which represents or suggests that said product is a dairy product: *Provided, however*, that nothing contained in this order shall prevent the use in advertisements of a truthful, accurate and full statement of all of the ingredients contained in said product.

2. Disseminating or causing to be disseminated by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product any advertisement which contains any of the representations prohibited in Paragraph One of this order.

Commissioners Gwynne and Mason not participating.

Decision

IN THE MATTER OF
OCTA-GANE, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6545. Complaint, Apr. 30, 1956—Decision, Aug. 30, 1956

Consent order requiring the manufacturer and distributors of "Gane Air Flow Needle," replacement for the conventional idling pin in carburetors of gasoline motors, to cease advertising falsely that the device would save gas and reduce fuel consumption in gasoline engines, improve engine performance generally, prevent formation of carbon deposits, prevent stalling, etc.

Mr. Edward F. Downs for the Commission.

INITIAL DECISION BY EVERETT F. HAYCRAFT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 30, 1956, charging them with having violated the provisions of the Federal Trade Commission Act through the making of false, misleading and deceptive statements and representations with respect to the use of a device designated as "Gane Air Flow Needle" or "Gane Air Jet Needle" sold by them to be used as a replacement for the standard or conventional type of idling pin in the carburetors of gasoline motors. In lieu of submitting answer to said complaint, all of the respondents (except respondent Thelma Moore) on July 6, 1956, entered into an agreement for consent order with counsel supporting the complaint disposing of all the issues in this proceeding in accordance with Section 3.25 of the Rules of Practice and Procedure of the Commission, which agreement has been duly approved by the Director of the Bureau of Litigation.

Said respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Respondents in the agreement waived any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. It was further provided that said agreement, together with the complaint, shall constitute the entire record herein; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision