

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

of the Commission; that said agreement is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The agreement also provided that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing; that it may be altered, modified or set aside in the manner provided for other orders; and that the complaint may be used in construing the terms of the order.

Said agreement also provided that on or about September 28, 1953, the name of said respondent, Octa-Gane, Inc., was changed to Gane Economy Club, Inc., and since that time all business has been conducted by said Gane Economy Club, Inc., Lucile M. Hursh and Fred Ellers, individually and as officers of Gane Economy Club, Inc., and by Alexander Hursh as sales manager and principal stockholder of Gane Economy Club, Inc.

It is further provided in said agreement that Thelma Moore, named as a respondent, individually and as an officer of Octa-Gane, Inc., is no longer in any way associated with the other respondents, is not now and never has been associated in any way with respondent Gane Economy Club, Inc. Although the said agreement did not specifically so provide, it apparently was contemplated that the complaint as to respondent Thelma Moore would be dismissed inasmuch as her name was not included as a party respondent in the draft of the order agreed upon and submitted to the hearing examiner.

This proceeding has now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order. It appears that the said agreement, and the order contained therein, cover all the allegations of the complaint and it is believed the said order will safeguard the public interest to the same extent as could be accomplished by an order issued after full hearing. The Commission in a contested case, Vacu-Matic Carburetor Company, Docket No. 3388, 38 F.T.C. 704, involving a device purporting to serve substantially the same purpose as the device in this case, issued an order to cease and desist containing prohibitive language substantially the same as that contained in the order in this case. Therefore, the aforesaid agreement is hereby accepted and is ordered filed upon becoming a part of the Commission's decision in accordance with Sections 3.21 and 3.25 of the Rules of Practice and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent Octa-Gane, Inc., was formerly a corporation existing and doing business under and by virtue of the laws of the State of California. On or about September 28, 1953, the name of said

195 .

Order

corporate respondent, Octa-Gane, Inc., was changed to Gane Economy Club, Inc., and since said date all business formerly conducted by respondent Octa-Gane, Inc., has been conducted by respondents Lucile M. Hursh and Fred Ellers, individually and as officers of said Gane Economy Club, Inc., and by respondent Alexander Hursh as sales manager and principal stockholder of said Gane Economy Club, Inc. The address of said Gane Economy Club, Inc., and said individual respondents is 603 West Las Tunas Drive, San Gabriel, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding, which is in the public interest, and of the respondents hereinabove named; the complaint herein states a cause of action against said respondents under the provisions of the Federal Trade Commission Act.

ORDER

It is ordered, That respondent Octa-Gane, Inc., a corporation, and its officers, its successor, Gane Economy Club, Inc., a corporation, and its officers, respondents Lucile M. Hursh and Fred Ellers, individually and as officers of either or both of said corporations, Alexander Hursh, individually and as an officer of Octa-Gane, Inc., and as sales manager and as a principal stockholder of Gane Economy Club, Inc., and respondents Ernest J. Newhouse and Don Forrester, individuals trading as Newhouse Automotive Industries, or under any other name or names, 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 Trade Commission Act, of the device designated as "Gane Air Flow Needle" or "Gane Air Jet Needle" or any other substantially similar device, whether sold under the same names or any other name or names, do forthwith cease and desist from representing directly or by implication:

1. That the use of said product in carburetors of gasoline engines will result in any reduction in gasoline consumption, increase the mileage per unit of gasoline, produce smoother or better idling; prevent an over-rich mixture of gasoline and air from entering the engine or improve the gas and air ratio unless such representations are expressly limited to those cases in which the fuel mixture, due to improper adjustment of the carburetor, is excessively rich and a small amount of additional air may serve to lean such mixture only when the carburetor is in idling operation, and unless in immediate conjunction with such representations an affirmative disclosure is made that said product will be of no benefit in those instances where the carburetor is in proper adjustment.

Decision

53 F.T.C.

2. That the use of said product in carburetors of gasoline engines will:

- (a) cause engines to start quicker or easier;
- (b) result in faster pick-up;
- (c) prevent formation of carbon deposits;
- (d) prevent stalling;
- (e) prevent the oil from being diluted by unburned fuel;
- (f) provide the proper gas and air mixture.

3. That the use of said product in carburetors of gasoline engines will perform any useful service in the carburetion of gasoline in an automobile engine, or in the improvement of engine performance in excess of such effect as it may have in leaning the fuel mixture in those cases referred to in paragraph 1.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Thelma Moore.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT
OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 30th day of August, 1956, become the decision of the Commission; and, accordingly:

It is ordered, That respondent Octa-Gane, Inc., a corporation, and its officers, its successor, Gane Economy Club, Inc., a corporation, and its officers, respondents Lucile M. Hursh and Fred Ellers, individually and as officers of either or both of said corporations, Alexander Hursh, individually and as an officer of Octa-Gane, Inc., and as sales manager and as a principal stockholder of Gane Economy Club, Inc., and respondents Ernest J. Newhouse and Don Forrester, individuals trading as Newhouse Automotive Industries, 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.

Commissioners Gwynne and Mason not participating.

Complaint

IN THE MATTER OF
DOLCIN CORPORATION

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

Docket 6569. Complaint, June 12, 1956—Decision, Aug. 31, 1956

Consent order requiring the distributor of "Dolcin" medicinal preparation, treatment for arthritis and rheumatism, to cease contracting to pay or paying promotional allowances to certain favored customers but not to others competing with them, and making promotional allowances to customers on conditions restricting their right to enter into promotional agreements with its competitors.

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

Mr. Donald K. King for the Commission.

Mr. Sigmund Eisenstein, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporation named as the respondent in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (15 U.S.C.A., Section 13), and the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C.A., Section 45), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent, Dolcin Corporation, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 683 Fifth Avenue, New York, New York.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the offering for sale, sale, and distribution of a medical preparation known as "Dolcin" (U. S. Patent No. 2,471,394), a succinate-salicylate formula intended for the relief of pain accompanying arthritis and rheumatism. Dolcin is manufactured, packaged, and shipped for respondent by Arner Company, Inc., of Buffalo, New York. Dolcin is packed in bottles of 100, 200, and 500 tablets.

Dolcin 100's are sold to all direct accounts, both wholesale and retail, at \$13.30 a dozen; 200's at \$23.40 per dozen; and 500's at