

MIDAS, INC., ET AL.

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

Docket 7771. Complaint, Feb. 4, 1960—Decision, July 7, 1960

Consent order requiring a Chicago distributor to cease representing falsely by
radio and television, magazine and other advertising, and advertising script

Complaint

furnished its retail dealers, that their automobile mufflers were unconditionally guaranteed for the life of the automobiles on which they were installed.

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 Midas, Inc., a corporation, and Gordon Sherman, Robert Schroeder and Robert M. Jacob, individually and as officers 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 as follows:

PARAGRAPH 1. Respondent Midas, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 4101 West 42nd Place, in the City of Chicago, State of Illinois. The individual respondents Gordon Sherman, Robert Schroeder and Robert M. Jacob are President and Treasurer, Vice President, and Secretary, respectively, of said corporate respondent, have the same address as the corporate respondent, and control, direct and formulate the acts, practices and policies of said corporate respondent.

PAR. 2. Respondents are now, and for more than two years last past have been, engaged in the advertising, offering for sale, sale and distribution of automobile mufflers. Respondents ship, and cause to be shipped, their said mufflers, when sold, from the State of Illinois to their franchised retail dealers, many of whom are located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing sales of their products, the respondents have made certain statements and representations on television, radio, in magazines of national circulation and trade journals, and in brochures, circulars, mats, signs, radio and television script furnished to its retail dealers. Among and typical, but not all inclusive, of the statements and representations so made are the following:

You can keep your car forever and never have to buy another muffler. That's what the Midas guarantee means

Guarantee in writing for the life of your car

No charge for installation, its free!

Two . . . a woman likes these words "A lifetime guarantee". Nothing evasive. No vaguely worded "warranty". No fine print doubletalk. It says "guaranteed for the life of your car"

. . . There's never a labor charge for muffler installation at any Midas shop

PAR. 4. The respondents, through the use of the aforesaid statements and representations, and others similar thereto, represent, directly and by implication, that their mufflers are unconditionally guaranteed for the life of the automobiles on which they are installed.

PAR. 5. Said statements and representations were, and are, false, misleading and deceptive. In truth and in fact, respondents' mufflers are not guaranteed for the life of the purchaser's automobile but only for such period as he owns the vehicle, and such guarantee is not unconditional but is subject to limitations not revealed in such advertising.

PAR. 6. By the aforesaid practices, respondents place in the hands of retailers means and instrumentalities by and through which they may mislead the public as to the guarantee of said mufflers.

PAR. 7. Respondents, at all times mentioned herein, have been, and now are, in substantial competition, in commerce, with corporations, firms and individuals engaged in the sale of auto mufflers.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade in commerce has been, and is being, unfairly diverted to respondents from their competitors and substantial injury has thereby been, and is being, done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. William A. Somers supporting the complaint.

Mr. David Silbert, of Chicago, Ill., for respondents.

INITIAL DECISION OF JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on February 4, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods

of competition, in commerce, in violation of the Federal Trade Commission Act, by misrepresenting the nature and extent of the guarantee given on the automobile mufflers sold by them. After being served with said complaint, respondents appeared by counsel and entered into an agreement, dated April 29, 1960, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by all respondents, by counsel for said respondents, and by counsel supporting the complaint, and approved by the Director and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint, and have agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive 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 said agreement. It has been agreed 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, and that the complaint may be used in construing the terms of said order. It has also been agreed that the aforesaid agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Midas, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois. Respondents Gordon Sherman, Robert Schroeder and Robert M. Jacob are individuals and officers of said corporate respondent. Said

corporate and individual respondents have their office and principal place of business located at 4101 West 42d Place, Chicago, Ill.

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

ORDER

It is ordered, That respondent Midas, Inc., a corporation, and its officers, and Gordon Sherman, Robert Schroeder and Robert M. Jacob, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of automobile mufflers, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Misrepresenting, in any manner, the nature or extent of the guarantee of a product.
2. Representing that a product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform are clearly disclosed.
3. Placing any means or instrumentality in the hands of others by and through which the public may be misled as to the guarantee of a product.

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 7th day of July 1960, become the decision of the Commission; and, accordingly:

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.

IN THE MATTER OF

RAYCO MANUFACTURING COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE CLAYTON ACT