

IN THE MATTER OF
PORTE MANUFACTURING CO., INC., ET AL.

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

Docket C-586. Complaint, Sept. 12, 1963—Decision, Sept. 12, 1963

Consent order requiring two associated corporations in Brooklyn, N.Y., to cease selling automatic transmission fluid having a lubricating oil base of previously used oil that had been reprocessed, with no clear disclosure of such prior use in advertising or on containers; and to cease representing their hydraulic brake fluid as "guaranteed" without disclosing that the "guaranty" was limited to a refund of the price of the brake fluid or replacement thereof.

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 Porte Manufacturing Co., Inc., a corporation, Genuine Chemical Corp., a corporation, Raphael Porte, individually and as an officer of each of said corporations, and Betty Cooper, individually and as an officer of Porte Manufacturing Co., Inc., 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 thereto would be in the public

interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Porte Manufacturing Co., Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, Genuine Chemical Corp., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondents Raphael Porte and Betty Cooper are officers and formulate, direct, and control the acts, practices, and policies of the corporate respondent, Porte Manufacturing Co., Inc.

Raphael Porte is an officer of Genuine Chemical Corp., and formulates, directs and controls the acts, practices and policies of the corporate respondent, Genuine Chemical Corp.

Individual respondent, Raphael Porte, is likewise the individual owner of The Ray Chemical Co., Joray Manufacturing Co., Presto Electric Co., Circle Manufacturing Co. and Castoyl Mfg. Co.

All respondents have their principal office and place of business located at 3179 Atlantic Avenue, Borough of Brooklyn, County of Kings, city and State of New York.

PAR. 2. Respondent Porte Manufacturing Co., Inc., is now, and has been, engaged in the manufacturing, offering for sale, sale and distribution of automatic transmission fluid, and hydraulic brake fluid under the brand name of "PORTO". Said respondent has likewise manufactured automatic transmission fluid for The Ray Chemical Co. under the brand name "SUPER 21"; automatic transmission fluid for the Joray Manufacturing Co. under the "JORAY" brand name; automatic transmission fluid for the Castoyl Manufacturing Co. under the brand name of "CASTOYL"; hydraulic brake fluid for the Genuine Chemical Corp. under the brand name of "GENUINE"; hydraulic brake fluid for the Joray Manufacturing Co. under the brand name of "STANDARD", and hydraulic brake fluid for the Presto Electric Co. under the brand name of "PRESTO".

Respondent's automatic transmission fluid has, among other functions, a lubricating function.

Said products have been marketed nationally and have been resold at automotive accessory places of business, both wholesale and retail.

PAR. 3. In the course and conduct of their business, respondents have caused said automatic transmission fluid and hydraulic brake fluid, when sold, to be shipped from their place of business in the State of New York to the purchasers thereof located in various other States of the United States, and at all times mentioned herein have maintained a substantial course of trade in said automatic transmis-

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sion fluid and hydraulic brake fluid in commerce as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, the respondents have sold automatic transmission fluid which has a lubricating oil base, that consists in whole, or in substantial part, of previously used oil that has been reprocessed or re-refined.

For the purpose of inducing the sale of automatic transmission fluid, respondents have not clearly and conspicuously disclosed the prior use of said oil in their advertising or on the containers of said product.

PAR. 5. In the course and conduct of their business, and for the purpose of inducing the sale of hydraulic brake fluid, respondents have made numerous statements and representations using the word "guaranteed", but have not conspicuously and fully disclosed, either in their advertising or on their containers, the nature, extent and conditions of the guaranty and the manner in which the guarantor will perform thereunder.

PAR. 6. In truth and in fact:

(a) The automatic transmission fluid advertised, sold and distributed by the proposed respondents was manufactured from oil which was in whole, or in part, re-refined from oil that had been previously used for lubricating purposes.

(b) The "guaranty" was deceptive because only after having purchased said hydraulic brake fluid, and a claim made, did the purchaser ascertain the true fact that said guaranty was limited to a refund of the price of hydraulic brake fluid, or replacement thereof.

PAR. 7. By the aforesaid practices, respondents have furnished, or otherwise placed in the hands of wholesalers and retailers, directly or indirectly, the means and instrumentalities by and through which they may mislead the public as to the nature of the oil used in the manufacture of said automatic transmission fluid and as to the nature and scope of said "guaranty" used in connection with the sale of hydraulic brake fluid.

PAR. 8. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition in commerce with corporations, firms and individuals, in the sale of automatic transmission fluid and hydraulic brake fluid.

PAR. 9. 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.

PAR. 10. 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 methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent Porte Manufacturing Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Genuine Chemical Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Respondent Raphael Porte is an individual and an officer of each of said corporations. Respondent Betty Cooper is an individual and officer of Porte Manufacturing Co., Inc., only.

Each of the aforementioned companies and respondents have maintained, and still maintain, their principal office and place of business

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at 3179 Atlantic Avenue, Borough of Brooklyn, County of Kings, city and State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Porte Manufacturing Co., Inc., a corporation, and its officers, Raphael Porte and Betty Cooper, individually and as officers of said corporation; Genuine Chemical Corp., and its officer, Raphael Porte, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device in connection with the manufacturing, offering for sale, sale, or distribution of lubricating oil, including, but not limited to automatic transmission fluid and hydraulic brake fluid, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Advertising, offering for sale, packaging or selling, lubricating oil, including, but not limited to automatic transmission fluid, which is composed in whole or in substantial part of oil which has been reclaimed, or in any manner processed from previously used oil, without disclosing such prior use to the purchaser, or potential purchaser, in advertising and in sale promotion material, and by a clear and conspicuous statement to that effect on the front panel or front panels of the container.

2. Representing in any manner that lubricating oil, including, but not limited to automatic transmission fluid, composed in whole or in part of oil that has been manufactured, reprocessed, or re-refined from oil that has been previously used, has been manufactured from oil that has not been previously used.

3. Representing, directly or by implication, in any manner, that their products are guaranteed unless the nature, extent and conditions of the guaranty and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in conjunction with the guaranty representations.

It is further 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 this order.

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IN THE MATTER OF
RHODA LEE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS

Docket C-587. Complaint, Sept. 13, 1963—Decision, Sept. 13, 1963

Consent order requiring three associated corporate manufacturers of ladies' sportswear in New York City, to cease violating the Textile Fiber Products Identification Act by failing to show plainly on labels the true generic name of the constituent fibers and the percentage thereof, and the name of the country where imported products were processed or manufactured; and by removing and mutilating, prior to sale to the ultimate consumer, the identifying tags, etc., required to be affixed to such products.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Textile Fiber Products Identification Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Rhoda Lee, Inc., Elberton Manufacturing Company, and Rilla, Inc., corporations, and their officers, and Fred Alcott and Isidor Alcalay, individually and as officers of said corporations, and Adolf Alcalay, individually and as an officer of Rhoda Lee, Inc., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Textile Fiber Products Identification 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. Respondent Rhoda Lee, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 525 Seventh Avenue, New York, New York.

Respondents Elberton Manufacturing Company, and Rilla, Inc., are corporations organized, existing and doing business under and by virtue of the laws of the State of Georgia with their office and principal place of business located at Highway 17, Elberton, Georgia.

Respondents Fred Alcott, Isidor Alcalay, and Adolf Alcalay are officers of corporate respondent Rhoda Lee, Inc., and formulate, direct and control the acts, practices and policies of said corporate respondent.