

Corporation and International Paper Company for similar grades of coarse paper in effect from time to time during the calendar year in question. Respondents' offers and sales shall be made on such terms and conditions of sale (including terms and conditions of credit) as respondents may establish in good faith from time to time.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this Order, file with the Federal Trade Commission a report, in writing setting forth in detail the manner and form in which they intend to comply, are complying or have complied with this Order.

IN THE MATTER OF
ELECTRA SPARK COMPANY ET AL.*

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

Docket 8274. Complaint, Jan. 13, 1961—Decision, June 5, 1964

Order requiring three corporations and their officers, engaged in the sale and distribution of automobile spark plugs under the trade name "Lectra Fuel Igniter", to cease representing falsely in advertising that their said "Fuel Igniter" was not a spark plug, would give better gas mileage and better engine performance than conventional spark plugs, enable the user to switch from premium to regular gasoline, and was unconditionally guaranteed; that salesmen and distributors could earn excessive amounts, and that the United States Government had field-tested the product and was a substantial purchaser.

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 The Lectra Spark Company,** a corporation, and Fred P. Dollenberg and Harry Petrick, individually and as officers of said corporation; Lectra Sales Corporation, a corporation, and Jack Howard, Bernard L. Silver and Harry Petrick, individually and as officers of said corporation; Barilen Corp., a corporation doing business as Lectra Fuel Igniter Co. and Hyman Schlosberg and Laurence Serlin, 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

*Proceeding reopened and remanded to the hearing examiner on Jan. 8, 1965.

[**The correct name of this respondent is Electra Spark Company.]

Complaint

65 F.T.C.

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

PARAGRAPH 1. Respondent The Lectra Spark Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located in the Benson Building, Jenkintown, Pa.

Respondents Fred P. Dollenberg and Harry Petrick are officers of The Lectra Spark Company. They formulate, direct and control the acts and practices of said corporation. The address of respondent Fred P. Dollenberg is 3921 Eden Street, Philadelphia, Pa. The address of respondent Harry Petrick is Amoskeag-Lawrence Mills, Inc., 1407 Broadway, New York, N.Y.

Respondent Lectra Sales 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 222 Fourth Avenue, New York, N.Y.

Respondents Jack Howard, Bernard L. Silver and Harry Petrick are officers of Lectra Sales Corporation. They formulate, direct and control the acts and practices of said corporation. The address of respondent Jack Howard is 33 West Ninth Street, New York, N.Y. The address of respondent Bernard L. Silver is 4 Romola Drive, Kings Point, New York. The address of respondent Harry Petrick is Amoskeag-Lawrence Mills, Inc., 1407 Broadway, New York, N.Y.

Respondent Barilen Corp. 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 730 Third Avenue, New York, N.Y.

The business address of respondents Hyman Schlosberg and Laurence Serlin is located at 730 Third Avenue, New York, N.Y. They formulate, direct and control the acts and practices of the Barilen Corp.

The business address of respondent Barilen Corp. doing business as Lectra Fuel Igniter Co. is located at 730 Third Avenue, New York, N.Y.

PAR. 2. Respondents are now, and for several years last past have been, among other things, engaged in offering for sale, sale and distribution of automobile spark plugs under the trade name "Lectra Fuel Igniter", in commerce, between and among the various States of the United States.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, said spark plugs when sold, to be shipped from their places of business in the States of Pennsylvania and New York to purchasers thereof located in various other

States of the United States and in the District of Columbia, and 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. The volume of business of respondents in said automobile spark plugs in commerce is now, and has been, substantial.

PAR. 4. The advertising and selling of respondents' automobile spark plugs designated Lectra Fuel Igniter is conducted through several mediums. The respondent Lectra Sales Corporation has solicited mail orders from the general public through the medium of advertising in newspapers, magazines and other periodicals having an interstate circulation.

The respondent Barilen Corp. for the purpose of soliciting mail orders was given permission to use the name Lectra Fuel Igniter Co. by the respondent Lectra Sales Corporation. The trade name Lectra Fuel Igniter Co. was formerly owned by respondent Jack Howard. Said respondent Barilen Corp. operating under the trade name Lectra Fuel Igniter Co. also employed direct mail order advertising in magazines, newspapers and periodicals having an interstate circulation for said automobile spark plugs. The material for said advertising copy was furnished by respondent Lectra Sales Corporation. Upon receipt of orders from consumers said respondent transmitted the orders direct to respondent Lectra Sales Corporation which then shipped the spark plugs to the purchasers.

Another method employed by the respondent Lectra Sales Corporation in the sale of said spark plugs is the solicitation of agents and salesmen. These advertisements were run by said respondent in magazines having an interstate circulation commonly known as Opportunity Magazines.

Respondent Lectra Sales Corporation also sold direct to catalog houses, mail order houses and automobile specialty outlets. In the case of retail outlets, respondent Lectra Sales Corporation pays a portion of advertising expense and material for newspaper copy which is submitted by said respondent Lectra Sales Corporation. In dealing with catalog houses, respondent Lectra Sales Corporation provides advertising copy and pays the printing costs of inserts.

Thus, in the course and conduct of their aforesaid business, and for the purpose of inducing the sale of their products, the respondents have caused advertisements to be placed in various publications having distribution in various States of the United States. Respondents have also caused advertisements of their products to be mailed to prospective purchasers in States other than the States of New York and Pennsylvania.

PAR. 5. In the course and conduct of their business, respondents have made, and are making false, deceptive and misleading statements with respect to said automobile spark plugs. These statements are, and have been, made in advertisements in magazines, newspapers, sales brochures, counter display cards and other promotional material supplied to distributors, retailers, dealers and to the purchasing public.

Among and typical, but not all inclusive of such statements, are the following:

DRIVE YOUR CAR WITHOUT SPARK-PLUGS

* * * * *

... NEVER USE SPARK-PLUGS AGAIN! That's right! Spark-Plugs Haven't Changed In 30 Years—They Are As Obsolete As A Model T.

* * * * *

DRIVE faster, further, cheaper without Spark-Plugs and get peak performance using non-premium gas! Save 6¢ per gallon or more!

* * * * *

Drive without Spark-Plugs * * * Lectra Fuel Igniters are not air-gapped in any sense of the word * * *

* * * * *

... We are also guaranteeing that the Fuel Igniter will squeeze up to 6—maybe 8—more miles out of every gallon of gas purchased in the first year and every year—or we will replace them free until they do. That's a saving of \$40 per year. And it will do this using regular gas—economy gas—not the super gas bought at such walloping prices. That means a saving of \$50 each year. And the igniters will do this every year of the car's life—they improve with age. They never wear out!

* * * * *

* * * by just replacing gas-wasting old-fashioned inefficient spark-plugs that you'll soon have to throw away and replace anyhow—you will now get new pep, power and performance from your car, and you'll save \$100 a year or more as well!

4-Way GUARANTY

LECTRA FUEL IGNITERS are:

1. Guaranteed, unconditionally, against any manufacturing or mechanical defect.
2. Guaranteed, unconditionally, to function properly *for the life of your car*.
3. Guaranteed to:
 - INCREASE miles per gallon of gas
 - INCREASE horsepower
 - INCREASE engine RPM
 - IMPROVE ease of starting
 - IMPROVE acceleration (pick-up)

(This Guaranty applies to ANY car tuned to factory specifications.)

4. Guaranteed not to damage your car at any time in any way. This Guaranty endorsed by American Excess Company of London, England.

* * * * *

877

Complaint

EXCLUSIVE 4-WAY GUARANTEE

Every set of Lectra Fuel Igniters comes with this amazing 4-Way Guarantee, printed directly on each carton:

1. GUARANTEED against any manufacturing or mechanical defects
2. GUARANTEED to function properly for the life of the car
3. GUARANTEED to increase mileage, horsepower, engine RPM, improve ease of starting and acceleration
4. GUARANTEED for performance and endorsed by an internationally known insurance company

There's big money to be made here! Right now, Joe Jenkins of Point Marion, Pennsylvania has a big, growing business supplying dealers, service-stations, garages. He sells per month about \$20,000 of Lectra Fuel Igniters, most of it re-order. His gross business this year will be in six figures!

* * * * *

We find selling 5,000 a week nothing unusual for us.

* * * * *

... These men, who answered the original ad, are making amazingly high income as LECTRA distributors! ... Kenneth Frost, Ithaca, New York, says: "I sold \$2300 worth in three weeks".

* * * * *

With this sensational offer you can create your own substantial business worth \$50,000 or more!

... A U.S. Government Agency field-tested 5,000 in 727 vehicles, six months later ordered 25,000 more to use in 3,000 key vehicles.

* * * * *

Uncle is a LECTRA customer! Many military installations have field-tested the Fuel Igniter. As a result of these field tests, many thousand Fuel Igniters have been purchased by these Government units.

PAR. 6. Through the use of the foregoing statements and representations, respondents have represented directly or by implication that:

(a) The Lectra Fuel Igniter is not an automobile spark plug, is superior to the conventional automobile spark plug, and, the use thereof will give better gas mileage.

(b) The use of the Lectra Fuel Igniter will enable the user to switch from premium or high-octane gasoline to regular gasoline irrespective of the automobile engine's requirements.

(c) The use of the Lectra Fuel Igniters will result in better engine performance, power, or acceleration than conventional automobile spark plugs.

(d) The 4-Way Guaranty is unconditional.

(e) The earnings of distributors or salesmen of Lectra Fuel Igniters are in excess of the actual potential earnings.

(f) The United States Government is a substantial purchaser of Lectra Fuel Igniters or that its agencies have field-tested said products.

Complaint

65 F.T.C.

PAR. 7. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact:

(a) The Lectra Fuel Igniter is a type or kind of automobile spark plug and is not superior to conventional automobile spark plugs in fuel economy.

(b) The use of the Lectra Fuel Igniter will not enable the user to switch from premium, high-octane gasoline to regular gasoline with equal or better performance, when the automobile engine specifications require such high octane fuel.

(c) The use of the Lectra Fuel Igniter will not result in better performance, acceleration of power than conventional automobile spark plugs.

(d) The 4-Way Guaranty is not unconditional but has definite conditions attached thereto which are not set out in some of respondents' advertising.

(e) The offer that potential distributors or salesmen can create their own business in the sale of Lectra Fuel Igniters worth \$50,000 or more is exaggerated and misleading.

(f) The statement that one of respondents' distributors sells \$20,000 worth of Lectra Fuel Igniters per month and that his gross business from the sale of such products annually runs into six figures is untrue.

(g) The statement that one of respondents' distributors sells \$2,300 worth of Lectra Fuel Igniters in three weeks is likewise untrue.

(h) The United States Government is not a substantial purchaser of Lectra Fuel Igniters and said products have not been field-tested by any of its agencies.

PAR. 8. In the course and 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 and distribution of automobile spark plugs of the same general kind and nature as those sold by the respondents.

PAR. 9. The use by the respondents of the aforesaid false, misleading and deceptive statements and 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 Lectra Fuel Igniters by reason of said erroneous and mistaken belief. Furthermore, respondents, by supplying said advertising literature and the material for said sales talks, have furnished their distributors and the agents and representatives of their distributors, means and instrumentalities by and through which the purchasing public may be misled and deceived with respect to the representations set out in Paragraph Five hereof. As a con-

877

Initial Decision

sequence 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. 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 and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Terral A. Jordan supporting the complaint.

Mr. R. Gettinger and *Mr. M. Gettinger* of New York, N.Y. by *Mr. Irving J. Kaufman* for respondents.

INITIAL DECISION BY DONALD R. MOORE, HEARING EXAMINER **

MARCH 31, 1964

PRELIMINARY STATEMENT

The complaint in this proceeding was issued January 13, 1961, and duly served on all respondents.* It charges respondents with misrepresentation in the sale of automobile spark plugs designated "Lectra Fuel Igniter", in violation of the Federal Trade Commission Act.

After being served with the complaint, respondents appeared by counsel and filed answer making certain admissions but denying generally any violation of law.

After previous assignment to two other hearing examiners, the matter was duly assigned to the present hearing examiner November 30, 1961. There followed a series of negotiations between counsel designed to obviate the necessity of hearings in this matter. After various unavoidable delays, the negotiations have now culminated in the submission of a "Stipulation as to Facts and Proposed Order."

In that document (admitted in evidence as Commission Exhibit 3), counsel supporting the complaint and counsel for respondents have agreed that the stipulation, together with certain other exhibits admitted in evidence by agreement, shall constitute the evidentiary record. On the record thus made, counsel also have agreed, the hearing examiner may "make his findings of fact and conclusions" without further intervening procedure. The parties have, in effect, waived the filing of proposed findings and conclusions, the submission of briefs and the presentation of argument.

*Respondent Electra Spark Company is incorrectly designated in the complaint as The Lectra Spark Company. See Par. 1, Findings of Fact.

**The effective date stayed until further order of the Commission by order dated May 4, 1964.

Counsel further stipulated and agreed that a form of order attached to and made a part of the stipulation "constitutes an adequate and appropriate disposition of the allegations of the complaint and may be entered by the hearing examiner in disposition of this proceeding."

The examiner has taken the agreed order into account in reaching his decision in this matter. However, he is of the opinion that the order proposed by counsel is not, in all respects, an appropriate order in the light of the findings made and the conclusions reached, and he has accordingly modified it.

As the examiner interprets the stipulation, the parties have not conditioned the entry of the stipulation of facts on the acceptance of the order recommended by both counsel. In the caption of Commission Exhibit 3, the text of the order is denominated as a "Proposed Order", and the examiner has considered it merely as a joint recommendation of counsel supporting the complaint and counsel for respondents. The stipulation provides only that such order "may be entered", but does not purport to require its entry.

The considerations leading the examiner to enter a different form of order are set forth in the findings and conclusions that follow.

After carefully reviewing the entire record, the hearing examiner finds that this proceeding is in the interest of the public, and makes the following findings of fact and conclusions drawn therefrom, and issues the following order:

FINDINGS OF FACT

On the basis of the stipulation (CX 3), the following facts have been established:

1. Respondent Electra Spark Company is incorrectly designated in the complaint as The Lectra Spark Company and is one and the same corporation. Respondent Electra Spark Company is a corporation which was organized, existed and did business under and by virtue of the laws of the State of New Jersey. Prior to November 1959, the stock of Electra Spark Company was owned as follows: 60% by respondent Fred P. Dollenberg, 40% by respondent Lectra Sales Corporation and 20% by other individuals who are not parties to this proceeding.

During November 1959, the stock of Electra Spark Company was transferred to Amoskeag-Lawrence Mills, Inc., 1407 Broadway, New York, New York. This transfer of stock was made to facilitate various financing arrangements entered into at that time.

Respondents Fred P. Dollenberg and Harry Petrick were officers of Electra Spark Company and formulated, directed and controlled its acts and practices.

Beginning about November 1961, the business operations of Electra Spark Company had diminished to a point where it ceased doing business. Although the corporate charter has not been revoked, respondent Electra Spark Company is not now, and for a number of months has not been, engaged in any kind of business operations. At the time during which the Electra Spark Company was actively engaged in business, its office and principal place of business was in the Benson Building, Jenkintown, Pennsylvania.

The address of respondent Fred P. Dollenberg is 3921 Eden Street, Philadelphia, Pennsylvania. The address of respondent Harry Petrick is Amoskeag-Lawrence Mills, Inc., 1407 Broadway, New York, New York.

Respondent Lectra Sales Corporation is a corporation which was organized, existed and did business under and by virtue of the laws of the State of New York. At the time when it was actively engaged in business, its office and principal place of business was at 222 Fourth Avenue, New York, New York.

Prior to June 1959, the stock of Lectra Sales Corporation was owned by the following named respondents in the shares indicated: Jack Howard—40%, Bernard L. Silver—40% and Electra Spark Company—20%.

During June 1959, Lectra Sales Corporation was sold in its entirety to Amoskeag-Lawrence Mills, Inc., as part of a financing arrangement.

In November 1961, Lectra Sales Corporation was declared bankrupt and soon thereafter was formally adjudged bankrupt. The corporate charter has not been formally revoked, but respondent Lectra Sales Corporation is not now, and for many months has not been, engaged in any kind of business operations.

Both respondent Electra Spark Company and respondent Lectra Sales Corporation presently exist as corporate entities only in the sense that their respective charters of incorporation have not been formally revoked.

During the time of the actual business operations of Lectra Sales Corporation, its officers were respondents Jack Howard, Bernard L. Silver and Harry Petrick, and they formulated, directed and controlled its acts and practices. The address of respondent Jack Howard is 33 West 9th Street, New York 11, New York. The address of respondent Bernard L. Silver is 4 Romola Drive, Kings Point, New York. The address of respondent Harry Petrick is as above stated.

Respondent Barilen Corp. 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 at 730 3rd Avenue, New York, New York.

Hyman Schlosberg and Laurence Serlin are individuals and officers of Barilen Corp. They formulate, direct and control the acts and practices of the Barilen Corp. Their business address is 730 3rd Avenue, New York, New York.

The business address of respondent Barilen Corp., doing business as Lectra Fuel Igniter Co., is 730 3rd Avenue, New York, New York.

In or about November 1960, and subsequent to the bankruptcy of respondent Lectra Sales Corporation, respondents Fred P. Dollenberg and Bernard L. Silver organized and incorporated Electra Industries under the laws of the State of Delaware. The purpose and present activities of Electra Industries are to promote the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of "Lectra Fuel Igniters." None of the other respondents are concerned or connected with the operation of Electra Industries. The office and principal place of business of Electra Industries is 381 Park Avenue South, New York, New York.

2. For several years before the issuance of the instant complaint, and subsequent thereto in the manner previously described, respondents were engaged in offering for sale, selling and distributing automobile spark plugs under the trade name "Lectra Fuel Igniters", in commerce, between and among the various states of the United States.

3. In the course and conduct of their business, in the manner and to the extent and for the periods of time described, respondents now cause, and for some time prior to the issuance of the complaint, have caused, such spark plugs, when sold, to be shipped from their places of business in the States of Pennsylvania and New York to purchasers located in various other states of the United States and in the District of Columbia, and maintain, and have maintained, a substantial course of trade in such products, in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business of respondents in such automobile spark plugs in commerce, in the manner described, is now, and has been, substantial.

4. In the course and conduct of their business, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of automobile spark plugs of the same general kind and nature as those sold by the respondents.

5. A spark plug bearing the words "Lectra HD Fuel Igniter" and a spark plug carrying the words "Champion H-12" were received in evidence as Commission Exhibits 1 and 2, CX 1 is typical of respondents' products sold under the trade name "Lectra Fuel Igniter." CX 2 is typical of the conventional automobile spark plug commonly referred to as a "J plug." CX 1 is typical of the kind of spark plug which is the subject of this complaint and is designed and intended by re-

Beginning about November 1961, the business operations of Electra Spark Company had diminished to a point where it ceased doing business. Although the corporate charter has not been revoked, respondent Electra Spark Company is not now, and for a number of months has not been, engaged in any kind of business operations. At the time during which the Electra Spark Company was actively engaged in business, its office and principal place of business was in the Benson Building, Jenkintown, Pennsylvania.

The address of respondent Fred P. Dollenberg is 3921 Eden Street, Philadelphia, Pennsylvania. The address of respondent Harry Petrick is Amoskeag-Lawrence Mills, Inc., 1407 Broadway, New York, New York.

Respondent Lectra Sales Corporation is a corporation which was organized, existed and did business under and by virtue of the laws of the State of New York. At the time when it was actively engaged in business, its office and principal place of business was at 222 Fourth Avenue, New York, New York.

Prior to June 1959, the stock of Lectra Sales Corporation was owned by the following named respondents in the shares indicated: Jack Howard—40%, Bernard L. Silver—40% and Electra Spark Company—20%.

During June 1959, Lectra Sales Corporation was sold in its entirety to Amoskeag-Lawrence Mills, Inc., as part of a financing arrangement.

In November 1961, Lectra Sales Corporation was declared bankrupt and soon thereafter was formally adjudged bankrupt. The corporate charter has not been formally revoked, but respondent Lectra Sales Corporation is not now, and for many months has not been, engaged in any kind of business operations.

Both respondent Electra Spark Company and respondent Lectra Sales Corporation presently exist as corporate entities only in the sense that their respective charters of incorporation have not been formally revoked.

During the time of the actual business operations of Lectra Sales Corporation, its officers were respondents Jack Howard, Bernard L. Silver and Harry Petrick, and they formulated, directed and controlled its acts and practices. The address of respondent Jack Howard is 33 West 9th Street, New York 11, New York. The address of respondent Bernard L. Silver is 4 Romola Drive, Kings Point, New York. The address of respondent Harry Petrick is as above stated.

Respondent Barilen Corp. 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 at 730 3rd Avenue, New York, New York.

Hyman Schlosberg and Laurence Serlin are individuals and officers of Barilen Corp. They formulate, direct and control the acts and practices of the Barilen Corp. Their business address is 730 3rd Avenue, New York, New York.

The business address of respondent Barilen Corp., doing business as Lectra Fuel Igniter Co., is 730 3rd Avenue, New York, New York.

In or about November 1960, and subsequent to the bankruptcy of respondent Lectra Sales Corporation, respondents Fred P. Dollenberg and Bernard L. Silver organized and incorporated Electra Industries under the laws of the State of Delaware. The purpose and present activities of Electra Industries are to promote the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of "Lectra Fuel Igniters." None of the other respondents are concerned or connected with the operation of Electra Industries. The office and principal place of business of Electra Industries is 381 Park Avenue South, New York, New York.

2. For several years before the issuance of the instant complaint, and subsequent thereto in the manner previously described, respondents were engaged in offering for sale, selling and distributing automobile spark plugs under the trade name "Lectra Fuel Igniters", in commerce, between and among the various states of the United States.

3. In the course and conduct of their business, in the manner and to the extent and for the periods of time described, respondents now cause, and for some time prior to the issuance of the complaint, have caused, such spark plugs, when sold, to be shipped from their places of business in the States of Pennsylvania and New York to purchasers located in various other states of the United States and in the District of Columbia, and maintain, and have maintained, a substantial course of trade in such products, in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business of respondents in such automobile spark plugs in commerce, in the manner described, is now, and has been, substantial.

4. In the course and conduct of their business, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale and distribution of automobile spark plugs of the same general kind and nature as those sold by the respondents.

5. A spark plug bearing the words "Lectra HD Fuel Igniter" and a spark plug carrying the words "Champion H-12" were received in evidence as Commission Exhibits 1 and 2, CX 1 is typical of respondents' products sold under the trade name "Lectra Fuel Igniter." CX 2 is typical of the conventional automobile spark plug commonly referred to as a "J plug." CX 1 is typical of the kind of spark plug which is the subject of this complaint and is designed and intended by re-

spondents to be used in lieu of conventional spark plugs of the so-called "J" type of which CX 2 is illustrative.

6. Respondent Electra Spark Company participated primarily in the production and distribution of spark plugs. Respondent Lectra Sales Corporation was concerned primarily with the advertising and sale of spark plugs. Through and by virtue of the joint and mutual ownership of the stock of respondent Electra Spark Company and of respondent Lectra Sales Corporation, and because of the activities of the individual respondents, particularly Fred P. Dollenberg, Jack Howard and Bernard L. Silver, the operation of the two corporate respondents was basically and essentially but a single business enterprise.

7. The advertising and selling of respondents' automobile spark plugs designated "Lectra Fuel Igniter" were conducted through several media:

(a) Respondent Lectra Sales Corporation has solicited mail orders from the general public through advertising in newspapers, magazines and other periodicals having an interstate circulation.

(b) Respondent Barilen Corp., for the purpose of soliciting mail orders, was given permission to use the name Lectra Fuel Igniter Co. by the respondent Lectra Sales Corporation. The trade name Lectra Fuel Igniter Co. was formerly owned by respondent Jack Howard. Respondent Barilen Corp., operating under the trade name Lectra Fuel Igniter Co., also employed direct mail order advertising in newspapers, magazines and periodicals having an interstate circulation. The material for such advertising copy was furnished by respondent Lectra Sales Corporation. Upon receipt of orders from consumers, respondent Barilen Corp. transmitted the orders direct to respondent Lectra Sales Corporation which then shipped the spark plugs to the purchasers.

(c) Another method employed by respondent Lectra Sales Corporation in the sale of spark plugs was the solicitation of agents and salesmen. These advertisements were run by respondent Lectra Sales Corporation in magazines having an interstate circulation which are commonly known as "opportunity magazines."

(d) Respondent Lectra Sales Corporation also sold direct to catalog houses, mail order houses and to automobile specialty outlets. In the case of retail outlets, respondent Lectra Sales Corporation paid a portion of the advertising expense and material for newspaper copy which was submitted by respondent Lectra Sales Corporation. In dealing with catalog houses, respondent Lectra Sales Corporation provided advertising copy and paid the printing cost of inserts.

8. Thus, in the course and conduct of their business, and for the purpose of inducing the sale of their products, the respondents have caused advertisements to be placed in various publications having distribution in various states of the United States. Respondents have also caused advertisements of their products to be mailed to prospective purchasers in states other than the States of New York and Pennsylvania.

9. In the course and conduct of their business, and for the purpose of inducing the purchase of Lectra Fuel Igniter spark plugs, respondents have made numerous statements and representations concerning them, in advertisements in magazines, newspapers, sales brochures, counter display cards and other promotional materials supplied to distributors, retailers, dealers and to the purchasing public.

Among and typical, but not all inclusive, of such statements are the following:

DRIVE YOUR CAR WITHOUT SPARK-PLUGS

... NEVER USE SPARK-PLUGS AGAIN! That's Right! Spark-Plugs Haven't Changed In 30 Years—They Are As Obsolete As A Model T.

* * * * *

Drive faster, further, cheaper without Spark-Plugs and get peak performance using non-premium gas! Save 6¢ per gallon or more!

* * * * *

Drive without Spark-Plugs ... Lectra Fuel Igniters are not air-gapped in any sense of the word ...

* * * * *

... We are also guaranteeing that the Fuel Igniter will squeeze up to 6—maybe 8—more miles out of every gallon of gas purchased in the first year and every year—or we will replace them free until they do. That's a saving of \$40 per year. And it will do this using regular gas—economy gas—not the super gas bought at such walloping prices. That means a saving of \$50 each year. And the igniters will do this every year of the car's life—they improve with age. They never wear out!

* * * * *

... by just replacing gas-wasting old-fashioned inefficient spark-plugs that you'll soon have to throw away and replace anyhow—you will now get new pep, power and performance from your car, and you'll save \$100 a year or more as well!

4-way GUARANTY

LECTRA FUEL IGNITERS are:

1. Guaranteed, unconditionally, against any manufacturing or mechanical defect.
2. Guaranteed, unconditionally, to function properly *for the life of your car.*
3. Guaranteed to:
 - INCREASE miles per gallon of gas
 - INCREASE horsepower
 - INCREASE engine RPM

IMPROVE ease of starting

IMPROVE acceleration (pick-up)

(This Guaranty applies to ANY car tuned to factory specifications.)

4. Guaranteed not to damage your car at any time in any way. This Guaranty endorsed by American Excess [*sic*] Company of London, England.

* * * * *

EXCLUSIVE 4-WAY GUARANTEE

Every set of Lectra Fuel Igniters comes with this amazing 4-way Guarantee, printed directly on each carton:

1. GUARANTEED against any manufacturing or mechanical defects.
2. GUARANTEED to function properly for the life of the car.
3. GUARANTEED to increase mileage, horsepower, engine RPM, improve ease of starting and acceleration.
4. GUARANTEED for performance and endorsed by an internationally known insurance company.

There's big money to be made here! Right now, Joe Jenkins of Point Marion, Pennsylvania has a big, growing business supplying dealers, service-stations, garages. He sells per month about \$20,000 of Lectra Fuel Igniters, most of it re-order. His gross business this year will be in six figures!

* * * * *

We find selling 5,000 a week nothing unusual for us.

* * * * *

... These men, who answered the original ad, are making amazingly high income as LECTRA distributors! ... Kerneth Frost, Ithaca, New York, says: "I sold \$2300 worth in three weeks".

* * * * *

With this sensational offer you can create your own substantial business worth \$50,000 or more!

... A U.S. Government Agency field-tested 5,000 in 727 vehicles, six months later ordered 25,000 more to use in 3,000 key vehicles.

* * * * *

Uncle is a LECTRA customer! Many military installations have field-tested the Fuel Igniter. As a result of these field tests, many thousand Fuel Igniters have been purchased by these Government units.

10. By and through the use of the quoted statements, and others of similar import, the respondents have represented, directly or by implication, that:

- (a) The Lectra Fuel Igniter is not an automobile spark plug.
- (b) The use of Lectra Fuel Igniters in place of conventional automobile spark plugs will result in and give better starting, performance, power, acceleration and gas mileage in automobiles.
- (c) The use of Lectra Fuel Igniters will enable the user to switch from premium or high-octane gasoline to regular gasoline irrespective of the automobile engine's requirements.
- (d) The four-way guarantee is unconditional.

(e) One of respondents' distributors sold \$20,000 worth of Lectra Igniters per month and his gross business from the sale of such products annually ran into six figures; that one of respondents' distributors usually sold 5,000 Lectra Fuel Igniters each week; that one of respondents' distributors sold \$2,300 worth of Lectra Fuel Igniters in three weeks; and that potential distributors or salesmen could create their own business worth \$50,000 or more from the sale of Lectra Fuel Igniters.

(f) The United States Government is a substantial purchaser of Lectra Fuel Igniters and that its agencies have field tested the product.

11. In truth and in fact:

(a) The Lectra Fuel Igniter is a sparking device designed to ignite gasoline in an internal combustion engine. The spark emitted by the Lectra Fuel Igniter which ignites the gasoline is created by the surface discharge method. Lectra Fuel Igniters may be used as replacements for and in lieu of conventional spark plugs which create the spark required to ignite the gasoline in an internal combustion engine by sparking through the air space between two attracting electrodes. The function of both the Lectra Fuel Igniters and conventional spark plugs in internal combustion engines is to emit an electrical spark which ignites the fuel in the combustion chamber.

(b) The use of the Lectra Fuel Igniter will not enable the user to switch from premium, high-octane gasoline to regular gasoline with equal or better performance when the automobile specifications require such high-octane fuel.

(c) New Lectra Fuel Igniters and new conventional spark plugs operate in the same internal combustion engine with substantially the same level of operating efficiency with respect to starting, performance, power, acceleration and gas mileage. This approximately equivalent level of operating efficiency continues for a substantial number of miles or period of use but varies widely between different engines depending upon the age and condition of the engine, operating conditions, kind of fuel and other factors to which engines are subjected.

If respondents called Fred Labansky, Frenat Service Corp., 543 West 57th Street, New York 19, New York, as a witness, he would testify that his company used Lectra Fuel Igniters in its fleet of 84 New York City taxicabs. The company used both Studebaker Econ-O-Milers and Lark models with six-cylinder engines from May 1958 until March 1960. Company records would show that Igniters were installed in the Studebaker cabs and used over a period of 21 months with a

total accumulation of 125,000 miles on the Lectra Fuel Igniters. The only service necessary was an occasional inspection. Conventional spark plugs when used in taxicabs must be cleaned and adjusted each two to three weeks, which means approximately 3 to 4 thousand miles to Frenat Corporation, and replaced completely every four to six weeks. Lectra Fuel Igniters continued to perform without deterioration in the quality of performance for over 80 weeks.

If Leonard Schaffran, Secretary, Jofran Maintenance Corp., 509-11 West 55th Street, New York 19, New York, was called by respondents to testify, he would state that this company operated a fleet of taxicabs in New York City, that it has used the Lectra Fuel Igniters in its taxicabs and had put over 50,000 miles on the Igniters and that they still were giving peak performance at that mileage. He would further state that as of October 15, 1960, the company has equipped 30 of its fleet of 100 Ford six-cylinder 1960 cabs with Lectra Fuel Igniters and was installing Lectra Fuel Igniters in the other 70 cabs as fast as they came in for service.

If Frankie Sotto, Clyde Cab Corp., 409 East 94th Street, New York 28, New York, was called by respondents to testify, he would state that his company is engaged in the operation of taxicabs in New York City, that as of October 15, 1960, it had Lectra Fuel Igniter test sets which had gone over 35,000 miles and were still giving peak performance, which meant that the company did not have to clean, gap or replace spark plugs. Mr. Sotto would further state that his company has ordered 100 Lectra Fuel Igniters and was installing them in its taxicabs.

(d) Respondents' 4-Way Guarantee is not unconditional but has definite conditions and limitations which are not set out in certain of respondents' advertisements of the guarantees.

(e) One of respondents' distributors did not sell \$20,000 worth of Lectra Fuel Igniters each month and his gross business from the sale of such Igniters did not run into six figures each year. Respondents' salesmen and distributors do not usually sell 5,000 Lectra Fuel Igniters each week. One of respondents' distributors did not sell \$2,000 worth of Lectra Fuel Igniters in three weeks. All prospective or potential distributors or salesmen of respondents' Lectra Fuel Igniters cannot expect to create their own business, worth \$50,000 or more, from the sale of Lectra Fuel Igniters.

(f) The United States Government is not a substantial purchaser of Lectra Fuel Igniters, and such Igniters have not been field tested by any of its agencies.

Initial Decision

65 F.T.C.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

2. The complaint herein states a cause of action, and this proceeding is in the public interest.

3. The statements and representations of respondents regarding their "Lectra Fuel Igniter", as found herein, were and are false, misleading and deceptive in material respects.

4. The acts and practices of respondents, as found herein, have had and may have the capacity and tendency to mislead members of the purchasing public with respect to their "Lectra Fuel Igniter" and into the purchase of substantial quantities of such products as a result.

5. By supplying dealers, distributors and others with advertising, literature and material for sales talks, respondents have placed in their hands means and instrumentalities by and through which the purchasing public may be misled and deceived with respect to respondents' products.

6. As a consequence, substantial trade in commerce has been and may be unfairly diverted to respondents from their competitors, and substantial injury thereby has been or may be done to competition in commerce.

7. The acts and practices of respondents, as found herein, 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, in violation of Section 5 of the Federal Trade Commission Act.

8. The order being entered is designed to halt the misrepresentations found and at the same time permit appropriate truthful representations.

As indicated in the Preliminary Statement, *supra*, the examiner has made some changes in the form of order proposed by the parties.

First, the product coverage of Paragraphs A-1 and A-3 has been broadened, consistent with Paragraph A-2, so as to make the prohibitions of those paragraphs applicable not only to the Lectra Fuel Igniter, but also to any other product "of substantially similar design or construction."

Second, Paragraph A-2 has been revised to specify the nature of the claims permissible under the order. That section of the order, as jointly recommended by counsel, would have forbidden respondents to represent

That internal combustion engines equipped with * * * Lectra Fuel Igniters or any other product of substantially similar design or construction will start faster, give better performance, have more power, accelerate faster or give better gas

mileage than such engines equipped with conventional spark plugs *without clearly and conspicuously revealing in immediate connection with such representations the circumstances and conditions of use necessary to achieve such performance.* [Italic added.]

For the qualification indicated by the underlined words, the examiner has substituted a proviso that "nothing herein contained shall prevent truthful and non-deceptive representations that such Igniters, under specified conditions, give longer service than conventional spark plugs."

Under the order proposed by the parties, respondents would have been allowed to represent that engines equipped with Lectra Fuel Igniters "will start faster, give better performance, have more power, accelerate faster [and] give better gas mileage" than engines equipped with conventional spark plugs, provided only that they appropriately disclose "the circumstances and conditions of use necessary to achieve such performance."

In the opinion of the examiner, such a qualification is not appropriate on the basis of the agreed facts. The facts contained in the stipulation do not warrant a qualification of such breadth, nor do they provide an appropriate basis for a determination of the validity of the claims so qualified.

The agreed facts, as set forth in Paragraph Eight (C) of the stipulation [Findings of Fact, Paragraph 11(c)], are that:

New Lectra Fuel Igniters and new conventional spark plugs operate in the same internal combustion engine with substantially the same level of operating efficiency with respect to starting, performance, power, acceleration and gas mileage. This approximately equivalent level of operating efficiency continues for a substantial number of miles or period of use but varies widely between different engines depending upon the age and condition of the engine, operating conditions, kind of fuel and other factors to which engines are subjected.

Since initially Lectra Fuel Igniters give "substantially the same level of operating efficiency" as conventional spark plugs "with respect to starting, performance, power, acceleration and gas mileage", respondents cannot properly be permitted to represent that the Igniters are superior in those respects. As far as new Igniters and new conventional spark plugs are concerned, such superiority does not exist.

The attempted qualification apparently has reference to the claimed ability of the Lectra Fuel Igniter to *continue* such performance beyond the ordinary life of conventional spark plugs. The purpose of the qualifying language recommended by the parties in Paragraph A-2 of the proposed order was designed to give recognition to such claimed longer utility of the Lectra Fuel Igniter.

Although rejecting the recommended qualification as inappropriate, the examiner has inserted a substitute proviso to carry out the clear

intent of the parties and to reflect the factual situation established by the record.

Despite the advertising quoted in Paragraph Five of the complaint (to the effect, for example, that the Igniters "function properly for the life of the car"), the question of the validity of respondents' claim that the Lectra Fuel Igniter has a longer useful life than conventional spark plugs is not squarely raised by the pleadings, nor is it definitively resolved by the stipulated evidence. Accordingly, a definitive finding on this matter cannot be made other than that counsel supporting the complaint has not met his burden of proving that claim to be false and misleading.

As a matter of fact, the stipulated evidence points the other way. There is a generalized statement in Paragraph Eight (C) of the stipulation [Paragraph 11(c) of the Findings] to the effect that the operating efficiency of the Igniters continues at a level approximately equivalent to the operating efficiency of new spark plugs "for a substantial number of miles or period of use." That statement is qualified by language to the effect that such performance "varies widely between different engines", depending upon a variety of factors.

Against that background, the stipulated testimony of several taxicab fleet operators [Findings, Paragraph 11(c)] seems to establish some basis for a claim that the Lectra Fuel Igniters may have a longer useful life than conventional spark plugs. In any event, the stipulated evidence does not provide a basis for prohibiting such a claim; in fact, it requires, in the examiner's opinion, a proviso specifically permitting truthful and non-deceptive representations as to the useful life of respondents' product.

The order proposed by the parties has been modified as indicated. Otherwise, except for minor editorial changes, the proposed order is adopted as providing an appropriate remedy in the public interest.

ORDER

It is ordered, That respondents Electra Spark Company, a corporation (incorrectly designated in the complaint herein as The Lectra Spark Company), and its officers, and Fred P. Dollenberg and Harry Petrick, individually and as officers of such corporation; Lectra Sales Corporation, a corporation, and its officers, and Jack Howard, Bernard L. Silver and Harry Petrick, individually and as officers of such corporation; Barilen Corp., a corporation, doing business as Lectra Fuel Igniter Co., or under any other name, and its officers, and Hyman Schlosberg and Laurence Serlin, individually and as officers of such 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their Lectra Fuel Igniter or any other product of similar design or construction or any other articles of merchandise, do forthwith cease and desist from:

A. Representing, directly or indirectly:

1. That Lectra Fuel Igniters or any other products of substantially similar design or construction are not internal combustion engine spark plugs: *Provided, however*, That nothing herein contained shall prevent the non-deceptive use of the brand name, "Lectra Fuel Igniter."

2. That internal combustion engines equipped with Lectra Fuel Igniters or any other product of substantially similar design or construction will start faster, give better performance, have more power, accelerate faster or give better gas mileage than such engines equipped with conventional spark plugs: *Provided, however*, That nothing herein contained shall prevent truthful and non-deceptive representations that such Igniters, under specified conditions, give longer service than conventional spark plugs.

3. That the use of Lectra Fuel Igniters or any other product of substantially similar design or construction will enable the user to switch from premium or high-octane gasoline to regular gasoline with equal or better performance irrespective of the automobile engine's requirements.

4. That any product is guaranteed unless the nature and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed and respondents do in fact fulfill all of their obligations under the terms of the guarantee.

5. That respondents' distributors or salesmen have received earnings or profits in excess of those actually received or earned by such persons; or that the earnings or profits derived by distributors or salesmen of respondents' products will be any amount greater than that usually and customarily earned by distributors or salesmen of such products.

6. That the United States Government has purchased substantial numbers of respondents' products or has field tested such products.

B. Furnishing to, or otherwise placing in the hands of, retailers or dealers the means or instrumentalities by or through which they may mislead or deceive the public in the manner or as to the things prohibited by this order.

Syllabus

65 F.T.C.

FINAL ORDER

The hearing examiner having filed his initial decision herein on March 31, 1964, and no appeal having been taken therefrom; and

The Commission, on May 4, 1964, having issued an order staying the effective date of the decision herein, and now having determined that the case should not be placed on its own docket for review; and

The Commission having considered the request of respondent Harry Petrick, set forth in a letter dated May 1, 1964, that his name be excluded from any order which might be filed by the Commission, and having determined that the grounds advanced by respondent are not sufficient to support the relief requested:

It is ordered, That the request of respondent Harry Petrick be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner, filed March 31, 1964, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents Electra Spark Company, a corporation (incorrectly designated in the complaint as The Lectra Spark Company), Lectra Sales Corporation, a corporation, Barilen Corp., a corporation, and Fred P. Dollenberg, Harry Petrick, Jack Howard, Bernard L. Silver, Hyman Schlosberg, and Laurence Serlin 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 set forth in the initial decision.