

written report of their actions, plans, and progress, in complying with the provisions of this Order and fulfilling its objectives.

IN THE MATTER OF
DOUBLE EAGLE LUBRICANTS, INC., ET AL.

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

Docket 8589. Complaint, July 29, 1963—Decision, Oct. 22, 1964

Order requiring Oklahoma City sellers of previously used lubricating motor oil which they purchased from filling stations and other sources and then "re-refined" in their refinery plant, to cease selling such reclaimed oil without disclosing the prior use in advertising and promotional material and by a conspicuous statement to that effect on the front panel of containers; and to cease representing that reclaimed oil was manufactured from oil that had not been previously used.

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 Double Eagle Lubricants, Inc., a corporation, and Frank A. Kerran and Cameron L. Kerran, 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

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thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Double Eagle Lubricants, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Oklahoma. Individual respondents Frank A. Kerran and Cameron L. Kerran are officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. All respondents have a principal office and place of business at 1900 N.E. 1st Street, Oklahoma City, Oklahoma.

PAR. 2. Respondents are now, and for more than three years last past have been, engaged in the sale and distribution of reclaimed, or reprocessed, used lubricating oil to dealers for resale to the purchasing public. Among brand names under which these said products are sold are "Double Eagle," "Gold Bond," "Heat Pruf," "Arrow," "Golden West," "Native State" and "C and G." Respondents cause and have caused said products when sold to be transported from their place of business in the State of Oklahoma to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents are now, and have been, in competition with individuals and with firms and other corporations engaged in the sale and distribution of lubricating oil in commerce between and among the various States of the United States.

PAR. 4. Respondents' oil consists in whole or in substantial part of used oil, obtained from drainings of motor crank cases and from other sources, which is thereafter reclaimed or reprocessed. Said oil is sold in containers of the same general size, kind and appearance as those used for new oil and has the appearance of new and unused oil. In some instances the containers bear no markings of any kind indicating that said product is reclaimed or reprocessed used oil. Respondents' disclosure, if and when made, are in such a manner and location on the container in which said lubricating oils are packaged that the disclosure is not clear and conspicuous to the purchaser or potential purchaser.

In the absence of a clear and conspicuous disclosure on the containers that the oil therein is used, reclaimed or reprocessed, the general understanding and belief on the part of dealers and of the purchasing public is that oil sold in containers such as are used by respondents is,

in fact, new oil and not used, reclaimed or reprocessed oil. This belief is enhanced by the representations printed on the most conspicuous and prominent portion of respondents' oil containers as follows:

- (1) DOUBLE EAGLE
(Drawing of a double headed eagle perched on ribbon on which is stated:
"Guards Your Motor")
MOTOR OIL
Double Eagle Lubricants, Inc., Oklahoma City, Okla.
- (2) GOLDEN WEST MOTOR OIL
Quality Clear thru Double Eagle Lubricants, Inc., Oklahoma City, Okla.
- (3) HEAT PRUF
Motor Oil Resists Heat
- (4) ARROW
Motor Oil
- (5) NATIVE
State
Motor Oil
- (6) C and G
Motor Oil

This belief is further enhanced by respondents' use of the word "RE-REFINED" in large print on the containers in which said lubricating oils are packaged.

Therefore, the statements and representations and acts and practices set forth above, are false, misleading and deceptive.

PAR. 5. Respondents use the word "Guaranteed" on many of the brand name containers in which said lubricating oil is packaged thereby representing that said products are guaranteed in every respect.

PAR. 6. In truth and in fact, the guarantee provided did not disclose the terms, conditions or the extent of the application of the Guarantee. Therefore, said statement and representation was false, misleading and deceptive.

PAR. 7. Respondents' said acts and practices further serve to place in the hands of the uninformed or unscrupulous dealers a means and instrumentality whereby such persons may mislead the purchasing public with respect to the nature of respondents' product.

PAR. 8. The aforesaid acts and practices of the respondents, and the failure to clearly and conspicuously disclose that their oil is composed in whole or in part of used oil which has been reclaimed or reprocessed, has had and now has, the tendency and capacity to mislead and deceive a substantial number of retailers and members of the purchasing public into the erroneous and mistaken belief that said oil is refined by respondents from virgin crude oil, and to induce the

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purchasing public to purchase substantial quantities of respondents' product because of such erroneous and mistaken belief.

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 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.

Mr. Charles S. Cox supporting the complaint.

Mr. John B. Ogden of Oklahoma City, Okla, for the respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

JANUARY 13, 1964

Double Eagle Lubricants, Inc., a corporation, and Frank A. Kerran and Cameron L. Kerran, individually, and as officers of said corporation, hereinafter called respondents, are charged in a complaint issued by the Federal Trade Commission on July 29, 1963, with deceptive practices in the sale of previously used engine lubricating oil, alleged to be in violation of Section 5 of the Federal Trade Commission Act.

The respondents answered and denied the charging allegations of the complaint. A hearing has been held at which oral testimony and documentary evidence was received in support of and in opposition to the allegations of the complaint. Proposed findings of fact, conclusions of law and order have been filed by respective counsel. These have been considered. All proposed findings of fact and conclusions of law not found or concluded herein are rejected. Upon the basis of the entire record, the undersigned hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. The respondent, Double Eagle Lubricants, Inc., is a corporation, incorporated and doing business under the laws of the State of Oklahoma. The individual respondents, Frank A. Kerran, and Cameron L. Kerran, are President and Secretary-Treasurer, respectively, of Double Eagle Lubricants, Inc. The office and place of business of all respondents is 1900 N.E. First Street, Oklahoma City, Oklahoma. The individual respondents formulate, direct and control the acts and practices of the corporate respondent.

2. Respondents are now and for more than three years last past

have been engaged in the sale of petroleum products, principally previously used lubricating motor oil, which respondents obtain by purchase from filling stations and from various sources in other states, and then "re-refine" in their refinery plant located in Oklahoma City, Oklahoma. Respondents' "re-refining" process is somewhat similar to the refining process which the major integrated oil companies employ in refining virgin crude oil in their refineries. However, in refining virgin crude oil, several products are obtained from the crude in addition to lubricating oil, such as gasoline, diesel and fuel oil, along with many by-products; whereas, respondents, in their "re-refining" of previously used lubricating oil, only obtain engine lubricating oil and a low grade fuel oil. Lubricating oil does not necessarily wear out by its use in the crankcase of an automobile or aircraft engine. After continued use in the crankcase of an automobile, for instance, the oil often accumulates gum, carbon deposits and sludge, which are formed by the polymerization and oxidation of certain elements which are inherently present in crude oil. Also, water, dust and shavings from worn parts of the engine may find their way into the crankcase oil. Respondents' "re-refining" process cleans and chemically treats this used oil and removes the gum, carbon deposits, sludge, dirt or other impurities which may have accumulated in the oil. After the used oil has been through respondents' "re-refining" process, it is clear and clean, and resembles lubricating oil as originally refined from virgin crude oil. Respondents sought to offer testimony in support of their contention that their "re-refined" oil is at least equal to if not superior in quality to competing engine lubricating oil sold by the so-called "major" integrated oil companies which has been refined only the first or original time from virgin crude oil. Since the complaint does not question the quality of respondents' oil, the hearing examiner rejected such evidence. The evidence developed that respondents also sell an "automatic transmission fluid", identified as CX 8. However, since this automatic transmission fluid (CX 8) is not included in the complaint herein, it is not involved in this decision.

3. After respondents re-refine the used lubricating oil, respondents then place it in one-quart and gallon-size metal cans for sale and distribution to filling stations located in various States of the United States. These stations in turn resell the oil at retail to motorists and others who call at these filling stations for servicing of their automobiles. It is only the one-quart cans or containers sold by respondents which are involved in this proceeding, identified and received in evidence as CX 1-6, inclusive. The one-quart cans containing respondents' re-refined lubricating oil are of the same general size and appearance

as those generally used in the trade. The only difference being the labels on the cans. It is the labeling on respondents' one-quart cans (CX 1-6), which are complained about in this proceeding. This labeling will be discussed in detail hereafter in this decision.

4. The evidence shows, and it is found, that respondents' business in interstate commerce is substantial, amounting to approximately \$350,000 annually, or approximately one-half of respondents' gross annual sales. In the course of their business, respondents have been and are now in competition with individuals and other corporations engaged in the distribution and sale of lubricating oil in commerce between and among the States of the United States.

5. The individual respondents, prior to the incorporation of Double Eagle Lubricants, Inc., in 1958 or 1959, were doing business in Oklahoma City under the name of Double Eagle Refining Company, and were the respondents in a complaint, Docket No. 6432, issued by the Federal Trade Commission on October 29, 1955, alleging that respondents therein had violated the Federal Trade Commission Act by distributing and selling in commerce lubricating oil without indicating on the containers that the oil was previously used oil. After a formal hearing before a hearing examiner, the Commission, on February 14, 1958, issued a final order in which the respondents Frank A. Kerran and Cameron L. Kerran, individually and as copartners trading as Double Eagle Refining Company * * * were ordered to forthwith cease and desist from:

(1) Representing, contrary to the fact, that their lubricating oil is refined or processed from other than previously used oil;

(2) Advertising, offering for sale or selling any lubricating oil which is composed in whole or in 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 sales promotion material, and by a clear and conspicuous statement to that effect on the container.

6. The respondents appealed this decision to the United States Court of Appeals for the Tenth Circuit, and that Court affirmed the Commission's order. *Certiorari* from the United States Supreme Court was denied. Accordingly, the Commission's cease and desist order became final and binding on the respondents in that proceeding. Under the provisions of that cease and desist order, it became a deceptive practice within the intent and meaning of Section 5(a) of the Federal Trade Commission Act, as amended, for respondents in that proceeding to market and sell their re-refined lubricating oil in containers indistinguishable from those used generally to market lubricating oil refined from virgin crude, without "a clear and conspicuous statement" on the can that it was previously used oil.

7. Thereafter, in December, 1959, respondents began taking steps to comply with the cease and desist order issued by the Commission in Docket No. 6432 by revising the label on their cans so as to indicate thereon by a "clear and conspicuous statement" that the lubricating oil therein contained was processed from previously used oil. Prior to and at the time of the issuance of the complaint in Docket No. 6432, respondents were selling their re-refined engine lubricating oil under approximately seven different labels or brands—"Double Eagle," "Arrow," "Native State," "Golden West," "Heat Pruf," "C and G," and "Double Eagle Sup-R-Lub" motor oil. The labels on these cans are not the common paper labels such as those found on canned vegetables offered for sale in grocery stores, but are lithographed on the can by the can manufacturer. Therefore, before going to the expense of having new cans manufactured bearing revised labels which had not been approved by the Federal Trade Commission as being in compliance with the order issued in Docket No. 6432, respondents arranged with representatives of the Federal Trade Commission to first submit specimens of proposed changes in the wording on their labels to the Federal Trade Commission for approval before having new cans manufactured.

8. Accordingly, respondents began revising the labels on their cans so as to clearly state thereon that the oil had been previously used. Respondents had drawings made of each revised label which respondents proposed to use on each one-quart can for each brand of its re-refined oil. (Respondents appear to have marketed oil at one time in one-gallon and two-gallon cans, but it is only the labels on one-quart cans which are involved in this proceeding.) As each drawing was completed, respondents forwarded each drawing to American Can Company, a can manufacturer, for preparation of black and white proofs for each proposed label. After receipt of each black and white proof from the can manufacturer, respondents in turn submitted each black and white proof to the Federal Trade Commission¹ for its approval, along with a covering letter. These black and white proofs which had been submitted by respondents to the Commission were received in evidence at the hearing and were inadvertently marked by the reporter as RX 25(17), RX 25(27), RX 25(28), RX 25(30), RX 25(32), RX 25(33), and RX 25(36). (The exhibits should have been marked RX 25Z¹, RX 25Z², RX 25Z³, RX 25Z⁴, RX 25Z⁵, RX 25Z⁶, and RX 25Z¹⁰, respectively.) The covering letters, together with

¹ Respondents' dealings and communications with the Federal Trade Commission with respect to compliance with the order in Docket No. 6432 were with the then Compliance Division, Office of the General Counsel, Federal Trade Commission, Washington, D.C., which at that time was the proper office for handling compliance matters on behalf of the Federal Trade Commission.

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the replies thereto which respondents received from the Federal Trade Commission, were also received in evidence at the hearing.

9. These revisions in respondents' labels, preparation of drawings and black and white proofs thereof, and their submission to the Commission for approval were completed in August 1960. Letters received by respondents from representatives of the Compliance Division, Office of the General Counsel, Federal Trade Commission, approving each of the revised labels on respondents' cans, CX 1-6, which had been submitted, were received in evidence at the hearing, and marked RX 1, 3, 7, and 9, respectively. RX 9 is the final letter from the General Counsel of the Federal Trade Commission formally approving respondents' revisions in their labels on CX 1-6, and notifying respondents that such revisions constituted compliance with the Commission's cease and desist order in Docket No. 6432. This letter is as follows:

[Federal Trade Commission, Docket No. 8589; Respondent Exhibit No. 9. In the Matter of: Double Eagle Lubricants, Inc. Date: 10-2-63; Witness: Kerran; Reporter: GS.]

FEDERAL TRADE COMMISSION

WASHINGTON

Office of the General Counsel

SEPTEMBER 23, 1960.

DOUBLE EAGLE REFINING COMPANY,
Post Office Box 6215,
Oklahoma City, Oklahoma.

Attention: Mr. Cameron L. Kerran, Mr. Frank A. Kerran.

Re: Double Eagle Refining Company, Docket 6432.

GENTLEMEN: The Commission is in receipt of your communication of September 8, 1960, and earlier correspondence filed by you as a report showing the manner of compliance with the order to cease and desist issued on February 14, 1958, in the above case.

On the basis of the statements made therein and such accompanying data as have been presented, it appears that you are presently in compliance with the order, and your report accordingly has been received and filed.

Very truly yours,

DANIEL J. McCAULEY, Jr.,
General Counsel.

cc: Josh Lee, Esq.,
Bohanon, Barefoot & Lee,
1405 Liberty Bank Building,
Oklahoma City, Oklahoma.

10. Upon the basis of the approval by representatives of the Federal Trade Commission of respondents' revised labels and this official noti-

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fication that the revised labels constituted compliance with the terms of the cease and desist order in Docket No. 6432, respondents had new one-quart cans manufactured bearing the revised labels. After receipt of the new cans, respondents began marketing their oil in these cans (CX 1-6) in what they were led to believe was compliance with the Commission's order in Docket No. 6432.

11. However, after marketing their oil in the new cans for approximately nine months, respondents received a letter dated June 19, 1961, from Mr. P. B. Morehouse, Assistant General Counsel for Compliance, Federal Trade Commission, advising respondents that the statement on their cans to the effect that respondents' oil had been processed from previously used oil must be located on the "front panel" of the can (CX 12). Respondents replied to this letter by their letter dated June 26, 1961, which was received in evidence at the hearing as CX 13. Subsequently, respondents received a reply to this letter by a letter dated July 6, 1961, which was received in evidence at the hearing as CX 14. Copies of these letters, CX 12, 13, and 14 are as follows:

[Federal Trade Commission, Docket No. 8589; Commission Exhibit No. 12. In the Matter of: Double Eagle Lubricants, Inc., et al. Date: 10-2-63; Witness: Cameron Kerran; Reporter GS.]

JUNE 19, 1961.

Mr. CAMERON L. KERRAN and
Mr. FRANK A. KERRAN,
Double Eagle Lubricants, Inc.,
Post Office Box 6215,
Oklahoma City, Oklahoma.

Re: Double Eagle Refining Company, Docket 6432.

GENTLEMEN: On September 23, 1960, your compliance report was received and filed.

Paragraph 1 of the order prohibits advertising, offering for sale, or selling any lubricating oil which is composed in whole or in 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 sales promotion material, and by a clear and conspicuous statement to that effect on the container.

The Commission has instructed me to advise you that it construes the phrase "by a clear and conspicuous statement to that effect on the container" as requiring that the disclosure be on the front panel of the container.

It is therefore requested that you submit a supplemental report showing the manner in which you are complying with the order.

Very truly yours,

P. B. MOREHOUSE,
Assistant General Counsel for Compliance.

JDS:ecr

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[Federal Trade Commission, Docket No. 8589; Commission Exhibit No. 13. In the Matter of: Double Eagle Lubricants, Inc., et al. Date: 10-2-63; Witness: Cameron Kerran; Reporter GS.]

JUNE 26, 1961.

FEDERAL TRADE COMMISSION
Washington, D.C.

Attn: Mr. P. B. Morehouse, Assistant General Counsel for Compliance

DEAR SIR: We have your letter of June 19, 1961 in which you request us to submit a supplemental report showing the manner of our complying with the order.

Please be advised that we submitted black and white proofs of each of the packages we market to the Federal Trade Commission, and received a letter of approval on each and every package we market of re-refined oil.

We went a step further in compliance and submitted a sample of the finished containers to the Commission so that we were sure the finished containers were exactly as were the black and white proofs.

This was done because we did not intend to have our container supplier to make proofs and lithograph plates until we were sure we were in compliance and had the approval of the commission. This transaction entails some great expense, and since our commitments for containers require orders six months to one year in advance. We felt it would be almost impossible for us to operate without first having the approval of the commission.

I hope this answers the question for the supplemental report.

Yours very truly

DOUBLE EAGLE LUBRICANTS, INC.,
CAMERON L. KERRAN
F. A. KERRAN

FAK:baw

[Federal Trade Commission, Docket No. 8589; Commission Exhibit No. 14. In the Matter of: Double Eagle Lubricants, Inc., et al. Date 10-2-63; Witness: Cameron Kerran; Reporter GS.]

FEDERAL TRADE COMMISSION
WASHINGTON 25, D.C.

Bureau of Deceptive Practices

JULY 6, 1961.

Mr. CAMERON L. KERRAN,
Mr. FRANK A. KERRAN,
Double Eagle Lubricants, Inc.,
Post Office Box 6215,
Oklahoma City, Oklahoma.

Re: Double Eagle Refining Company, Docket 6432.

GENTLEMEN: Although you were advised on September 23, 1960, that your compliance report had been received and filed, the Commission recently has taken the position that a disclosure which is not made on the front panel of a container for reused oil is inadequate. I am not authorized to change the position taken by the Commission.

Please let me know whether you intend to revise any of your containers which do not show an adequate disclosure on the front panel. If you would submit copies

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of your labels and invoices, this office would be glad to advise you as to any changes which would be required, and to discuss with you the manner in which you will dispose of containers which do not have an adequate disclosure. If, however, you do not intend to revise your containers, the matter will be referred to the Commission for appropriate action.

Very truly yours,

BERRY W. STANLEY,
Chief, Division of Compliance,
Bureau of Deceptive Practices.

12. Ultimately the present complaint was issued on July 29, 1963, alleging, among other things, that the labels on respondents' cans are false and deceptive because :

(a) In some instances, the cans bear no markings of any kind indicating that said product is reclaimed or reprocessed oil ;

(b) Respondents' disclosure, if and when made, is in such a manner and location on the container in which said lubricating oils are packaged that the disclosure is not clear and conspicuous to the purchaser or potential customer ;

(c) In the absence of a clear and conspicuous disclosure on the container that the oil therein is used, the general understanding and belief on the part of dealers and of the purchasing public is that oil sold in containers such as are used by respondents is, in fact, new oil and not used, reclaimed or reprocessed oil. This belief is enhanced by the representations printed on the most conspicuous and prominent portion of respondents' oil containers as follows :

(1) DOUBLE EAGLE

(Drawing of a double headed eagle perched on ribbon on which is stated "Guard Your Motor")

Motor Oil

Double Eagle Lubricants, Inc., Oklahoma City, Okla. (CX 1)

(2) GOLDEN WEST MOTOR OIL

Quality Clear thru Double Eagle Lubricants, Inc., Oklahoma City, Okla. (CX 4)

(3) HEAT PRUF

Motor Oil

Resists Heat (CX 5)

(4) ARROW

Motor Oil (CX 2)

(5) NATIVE STATE

Motor Oil (CX 3)

(6) C and G

Motor Oil (CX 6)

(d) This belief is further enhanced by respondents' use of the word "RE-REFINED" in large print on the containers in which said lubricating oils are packaged.

These allegations will be discussed *seriatim*.

13. With respect to (a) above, that in some instances the cans bear no markings of any kind indicating that the oil is reclaimed or reprocessed oil, there is no evidence in the record to support this allegation. A duplicate of each of respondents' cans which are complained about in the instant complaint were received in evidence at the hearing, CX 1-6, inclusive. Respondents' lubricating oil is sold in these cans, each bearing a different brand name or label, "Double Eagle," "Arrow," "Native State," "Golden West," "Heat Pruf," and "C and G" motor oil, respectively.² The oil contained in each of the cans marked CX 1-6, inclusive, is the same oil, only the brand names or labels are different. The markings on each label of these cans (CX 1-6) plainly state that the oil contained therein is "Re-Refined from Previously Used Oil." It is found, therefore, that this allegation of the complaint has not been established.

14. The next allegation under (b) above, is that the disclosure on the cans, if and when made, (that the oil is processed from previously used oil), is not clear and conspicuous to the purchaser or potential customer. As stated in Paragraph 13 above, respondents' cans which are complained about in the complaint as being deceptive in their labels were received in evidence as CX 1-6, inclusive. The corresponding black and white proofs of the labels on each of these cans which respondents had submitted to the Federal Trade Commission and which were approved by its Compliance Division and General Counsel, were received in evidence at the hearing and marked RX 25(17) (Double Eagle), RX 25(36) (Arrow), RX 25(28) (Native State), RX 25(33) (Golden West), RX 25(32) (Heat Pruf), and RX 25(27) (C and G), respectively. Reproductions of these labels are attached hereto as Appendices 1-6, respectively. The labels on each of these cans plainly state that the oil contained therein is "Re-Refined from Previously Used Oil." So, from a reading of these labels in connection with the allegations of the complaint, it would appear that the statements on each can that the oil is "Re-Refined from Previously Used Oil" is "clear" and "conspicuous" and complies in every particular with the

² Additional cans were also received in evidence, including CX 7, 8, and 15. CX 7 is a can bearing the label "Double Eagle Sup-R-Lub. Heavy Duty Motor Oil" which, the evidence shows (Tr. 34), is not sold by respondents in interstate commerce or otherwise. CX 7 is one of a number of old cans remaining on hand bearing this label and respondents use the oil contained therein in respondents' own trucks. The can marked CX 8 contains an automatic transmission fluid and is not involved in the complaint herein. CX 15 is a duplicate of CX 1, the only difference being that CX 15 contains respondents' used oil, whereas CX 1 and the other cans in evidence are empty, with open tops, and do not contain oil. Commission counsel purchased CX 15, a can of respondents' "Double Eagle" motor oil at a filling station in Oklahoma City at the Station's regular price of 15 cents. (Tr. 145)

order of the Commission in Docket No. 6432. However, from documentary evidence received at the hearing (CX 12-14, inclusive, and RX 15), it would appear that the Commission may have "changed its position with respect to the type of disclosure which will be required." The letter from Mr. Morehouse, Assistant General Counsel of the Federal Trade Commission, to the respondents (CX 12) states, among other things, that the Commission, construes the phrase "by a clear and conspicuous statement to that effect on the container" as requiring that the disclosure be on the front panel of the container.

15. It would appeal that the "front panel" of CX 1, for example, the black-and-white proof thereof, RX 25(17) (Double Eagle) being attached hereto as an Appendix, would be that part of the can where the trade name is shown, *i.e.*, "Double Eagle," below which is a picture of two eagles, under which are the words "Guards Your Motor," and underneath that, "Motor Oil, Double Eagle Lubricants, Inc., Oklahoma City, Okla." A glance at the so-called "front panel" of CX 1 shows that the trade name, *i.e.*, the words "Double Eagle," the picture of two eagles, "Guards Your Motor, Motor Oil, Double Eagle Lubricants' Inc., Oklahoma City, Okla." occupy the entire "front panel" of the can. The so-called disclaimer "Double Eagle Motor Oil is scientifically Re-Refined from previously used oil to meet the varied requirements of all type motors" is located immediately to the side of the trade name. As Mr. Cameron Kerran testified, since the trade name occupies the entire so-called "front panel" of the can from top to bottom, there is no room for additional letters or wording unless the so-called disclaimer is substituted for respondents' trade name. If this should be done, respondents would probably lose the value of their trade name.

16. Also, if that part of the can where the words "Double Eagle," the picture of the two eagles, and the words, "Guards Your Motor, Motor Oil, Double Eagle Lubricants, Inc., Oklahoma City, Okla." appear is called the "front panel," then there are two front panels on each of respondents' cans except CX 4, the can bearing the trade name "Golden West." On each of the other cans, CX 1 (Double Eagle), CX 2 (Arrow), CX 3 (Native State), CX 5 (Heat Pruf), and CX 6 (C and G), the brand name appears twice, but on CX 4 (Golden West), the brand name appears only one time. On CX 1, 2, 3, 5, and 6, the so-called disclaimer "RE-FINED From Previously Used Oil" is immediately to the side of or between the two "front panels." With respect to CX 4 (Golden West), the disclaimer "Golden West Motor Oil Has Been Refined from Previously Used Oil * * * RE-REFINED" is to the side of the "front panel."

17. What does the testimony show with respect to whether respondents' disclosure on the can is *clear* and *conspicuous* to the purchaser or potential customer? (*Italic mine.*) Commission counsel offered the testimony of three witnesses to support the allegations of the complaint. The first was the individual respondent, Cameron L. Kerran. The others were Messrs. William T. Rycroft and Harold D. Stoll, operators of filling stations in Oklahoma City. Mr. Rycroft operates a filling station in Oklahoma City under the name Star Oil Company, and sells various brands of lubricating oil refined and produced by the major oil companies, in addition to "Double Eagle" motor oil. The major brands of lubricating oil sold by Mr. Rycroft's station sell at prices ranging from 45 cents to 55 cents per quart, whereas, "Double Eagle" sells for 15 cents per quart. On a day immediately prior to the hearing in this proceeding which began on October 2, 1963, counsel supporting the complaint called at the filling station operated by Mr. Rycroft and purchased a can of "Double Eagle" motor oil at the station's regular price of 15 cents. At the hearing, Mr. Rycroft identified a can exhibited to him by counsel supporting the complaint as being similar to a can containing "Double Eagle" motor oil purchased by counsel at his filling station a day or two prior to the hearing. This can was marked CX 15 and received in evidence at the hearing. Mr. Rycroft testified, among other things, as follows: Cans of various brands of lubricating oil are kept on shelves inside his filling station with the trade name facing "out" on the shelf; that, if a person could not see the word "Re-Refined" on the can, most people would know it is re-refined oil because they ask for "Re-Refined" oil, knowing it is much cheaper than unused lubricating oil. As an example, on Page 148 of the transcript of the testimony taken at the hearing, counsel supporting the complaint questioned Mr. Rycroft as follows:

Q. Now, the oil can here marked Exhibit, Commissions Exhibit #15, if a person comes in the way it is facing you there, would he be able to see the word refined?

A. He wouldn't be able to see it but most people knows it is re-refined oil. When they even buy it, they say give us a can of re-refined oil. They know it is re-refined being so cheap.

HEARING EXAMINER POINDEXTER. Do they particularly ask for re-refined oil?

The WITNESS. Most of them say, "What is your cheapest, bulk oil?" I say, "I have a can for 15¢." They say, "That's a rerun?" and I say, "Why, sure, it couldn't be nothing else for 15¢."

HEARING EXAMINER POINDEXTER. They know what they are buying?

The WITNESS. They know what they are buying.

By Mr. Cox:

Q. If a filling station man held it up that way, a person still wouldn't see the word "re-refined"?

A. No, he wouldn't.

Q. And please state how far away you can see the word re-refined on this can if you turn it around where the word re-refined faces you?

A. I can see it from there. I don't know how much farther I can see it. (Tr. 148)

18. Mr. Rycroft further testified that the average customer does not walk into the filling station and examine the different cans of oil displayed for sale on the shelf and then select and purchase a can or cans from that shelf, but rather, the customer asks the filling station attendant, "Do you have D-X or Double Eagle, or they will generally ask for what kind they want." In answer to a question as to what was the general approach of a customer when he drives into Mr. Rycroft's station, Mr. Rycroft replied:

A. Well, most of them, most of them that use it are just in an old car that just drinks oil and they say "Give me some of that Double Eagle, that 15¢ Double Eagle, or re-run." They don't always call it Double Eagle or re-run but most of them know what it is. Just something to get their old car by that uses a lot of oil, they use it. I have sold it to new cars but most of them it is just an old car, see.

Q. Now, relative to these customers that come in on the general approach you said, the various approaches, is that correct, that come in to buy?

A. Yes, sir.

Q. And does the average person really know anything about oils as such?

A. Well, I don't think the average person knows anything about oil in the first place.

Q. And is that also true relative to what the word "re-refined" means or the word "refined"?

A. Well, they surely know what it is. (Tr. 153)

19. The other witness, Mr. Harold D. Stoll, is a distributor and consignee in Oklahoma City for Phillips Petroleum Company, one of the so-called "major" integrated oil companies in the United States. Mr. Stoll also operates a Phillips Petroleum Company filling station in Oklahoma City. Phillips' stations sell only Phillips Petroleum Company products. Therefore, Mr. Stoll's station does not sell "Double Eagle" re-refined lubricating oil. Phillips Petroleum Company operates filling stations in 46 of the 50 States of the United States. Mr. Stoll is now and has been an employee of Phillips Petroleum Company for 32 years. During that time, he has served as a Phillips salesman, supervisor, district man, wholesale oil jobber, and representative calling on jobbers. Mr. Stoll was a witness and testified on behalf of the Commission at the previous hearing held in Docket No. 6432 in Oklahoma City. At the hearing held in the instant proceeding on October 2 and 3, 1963, Mr. Stoll testified, among other things, that: When he goes into a filling station and sees a can of lubricating oil with no marking thereon to the contrary, he assumes that the oil contained therein has not been previously used; that, in his opinion, the label

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on CX 15 containing the statement "Double Eagle Motor Oil is scientifically Re-Refined from previously used oil * * *" would not be misleading to anyone reading this statement; that "it means just what it says, sir, that it is taken from used oil and then re-refined". (Tr. 180)

20. Next to be considered are the allegations in the complaint and (c) in Paragraph 12, above, that, in the absence of a clear and conspicuous disclosure on the can that the oil contained therein has been used, the general understanding and belief on the part of dealers and of the purchasing public is that the oil contained in respondents' cans is new, not used oil, and that this belief is enhanced by respondents' trade name on each can. It is undisputed that, in the absence of a clear and conspicuous statement on the can or container, the purchasing public, in the absence of information to the contrary, would believe that lubricating oil contained in an unmarked can had not been previously used. However, each of respondents' can (CX 1-6) were marked. The label on each can (CX 1-6) stated, in so many words, that the oil contained therein had been "Re-Refined From Previously Used Oil." So, the question to be decided is not whether respondents' cans were marked, but whether the marking on the can to the effect that the oil had been previously used is so located on the can that the marking is "clear" and "conspicuous" in compliance with the Commission's order in Docket No. 6432. The Compliance Division and General Counsel of the Commission had previously passed on these "markings" and approved them as being "clear" and "conspicuous" in compliance with the order in Docket No. 6432. However, the Commission later reconsidered this view, issued the instant complaint, and evidence has been received at a formal hearing on the question whether the revised markings on respondents' labels are "clear" and "conspicuous."

21. The testimony of the two principal Commission witnesses on this question has been previously summarized in Paragraphs 17-19 herein. Counsel supporting the compliant questioned these witnesses at considerable length as to the distance from the can they were able to read the markings on the cans that the oil contained therein is "Re-Refined From Previously Used Oil." The question is not the distance from the can that a person is able to read the marking "Re-Refined From Previously Used Oil," but whether the marking is "clear" and "conspicuous." On most of the cans the word "Re-Refined" is in approximately one-half or seven-sixteenth inch letters, and the statement "From Previously Used Oil" is in approximately one-quarter inch letters. The wording is "clear" and "conspicuous" to anyone interested sufficiently to examine and read the label on the can. True,

the statement "Re-Refined From Previously Used Oil" is not on the so-called "front" of the can, where the label is located. There is not room at this location. The label takes up this space from the top to the bottom of the can. The words "Re-Refined From Previously Used Oil" are located to the side of the label, and are easily noticeable and readable to anyone who may be interested in examining the label on the can. Naturally, the label on the can should stand out, and all of the writing contained on the label cannot be placed under the trade name. The marking "Refined From Previously Used Oil" is immediately adjacent and to the side of the trade name. The can is round, and the label extends around the entire can. One portion of the label is as conspicuous as the other. In the opinion of the Commission witnesses, Messrs. Rycroft and Stoll, these markings are clear and conspicuous. There is no evidence in the record of any deception in the past and no reasonable likelihood that any dealer or purchaser will be deceived by any of said labels in the future. Upon the basis of all the evidence adduced at the hearing, the hearing examiner finds that the labels on respondents' cans (CX 1-6) are "clear" and "conspicuous" within the intent and meaning of the Commission's order in Docket No. 6432.

22. With respect to the allegation in the complaint and set out in (d) of Paragraph 12 above, that respondents' use of the word "Re-Refined" in large print on the label tends to enhance the belief that the oil contained in respondents' cans is "new" oil and has not been previously used, the evidence does not sustain this allegation. The witnesses who testified at the hearing, including the Commission witnesses Rycroft and Stoll, filling station operators, each testified that the word "Re-Refined" conveys the impression that the oil contained in the can is oil that has originally been refined from virgin or crude oil, then used, and refined again. (Kerran, Tr. 19-136; Rycroft, Tr. 144-149; Stoll, Tr. 163-196) The New Standard Dictionary of the English Language, by Funk & Wagnalls, defined the word "Refined" as:

Freed from impurity or extraneous substances; parted, as from other metals or substances; also clarified; as *refined* gold * * *.

Said dictionary also defines the prefix "re-" as follows:

* * * again; again and again; against; anew; over; opposite. The following words, in which *re* has its unmodified meaning of *again*, *anew*, are practically self-explaining in connection with the definitions of their root-words. Words not found in this list are in vocabulary place. reabridge * * * rerefined * * *.

This authoritative definition comports with the meaning given to the word "Re-Refined" by the witnesses who testified at the hearing, in-

cluding the Commission witnesses. Accordingly, it is found that the allegation of the complaint to the effect that respondents' use of the word "Re-Refined" enhances the belief on the part of dealers and the purchasing public that the oil sold in respondents' cans is "new" oil and has not been previously used, has not been established by the evidence.

23. In further support of the allegations of the complaint, Commission counsel offered in evidence what appear to be photostatic copies of three invoices, dated September, 1961. These were marked CX 9, 10, and 11, respectively, and received in evidence. Each purports to cover shipments of lubricating oil to three-named consignees with addresses outside the State of Oklahoma. The name "Double Eagle Refining Company, Oklahoma City, Oklahoma," appears at the top of each invoice, and at no place on the invoice is there a statement that the lubricating oil covered by the invoice has been previously used. Mr. Cameron L. Kerran explained these invoices (Tr. 40-42) as follows: That CX 9, 10, and 11 are office copies kept by the corporate respondent, Double Eagle Lubricants, Inc., of original invoices on lubricating oil sales; the original invoices which are mailed to customers bear the name Double Eagle Lubricants, Inc., and a statement near the bottom of the invoice "Refined From Previously Used Oil"; that Double Eagle Lubricants, Inc., was using some of the old Double Eagle Refining Company invoice forms for its own file copies when a Federal Trade Commission investigator called at the office of corporate respondent and requested copies of some of corporate respondent's invoices; these office file copies of the three invoices bore the heading "Double Eagle Refining Company" and did not, like the original invoice mailed to the customer, bear the statement "Refined From Previously Used Oil"; that, unfortunately, these office file copies of the three invoices were given to the investigator; and CX 9, 10, and 11 are duplicates of these office file copies.

24. Commission counsel did not offer any evidence to contradict the explanation given by Mr. Kerran with respect to CX 9, 10, and 11. This being so, the hearing examiner accepts the explanation given by Mr. Kerran. Since the evidence shows that the original invoice mailed to the three consignees by the corporate respondent, Double Eagle Lubricants, Inc., bore the printed notation "Refined From Previously Used Oil," the consignee customers could not possibly have been deceived by CX 9, 10, and 11. The consignee did not see CX 9, 10, and 11. The office file copies from which CX 9, 10, and 11 were made were kept in the corporate respondent's files. Accordingly, the hearing examiner does not give CX 9, 10, and 11 any corroborative weight to establish the allegations of the complaint.

25. Paragraph Five of the complaint alleges that respondents' use of the word "guaranteed" on some of their cans thereby represented that their products are guaranteed in every respect, whereas, the wording of the guarantee did not disclose the terms, conditions, or the extent of the application of the guarantee, thereby making said so-called guarantee false, misleading and deceptive. Respondents do not deny use of the word "guaranteed" on the labels of some of their cans, but say that the word was approved by the Federal Trade Commission when the labels here in question were approved, and further, that prior to the hearing in this proceeding, respondents discontinued use of the word "guaranteed" on their cans. It should be pointed out that respondents have not been using the word "guaranteed" on all of their cans. They formerly used the word "guaranteed" on CX 2, 3, 5, and 6, but not on CX 1, and 4. At some time prior to the hearing, they discontinued use of the word "guaranteed" on CX 2, 3, 5, and 6. Mr. Kerran testified, and it is found, that prior to the hearing, respondents instructed the manufacturer to delete the word "guaranteed" from all of respondents' cans, CX 2, 3, 5, and 6, and the manufacturer complied with this instruction: that respondents had received delivery on some new cans and the word "guaranteed" did not appear thereon; and respondents do not intend to resume the use of the word "guaranteed" on their cans at any time in the future. (Tr. 35-36) (Counsel supporting the complaint did not offer any evidence to contradict this testimony.)

26. Since respondents have voluntarily discontinued use of the word "guaranteed," have had it removed from their cans and do not intend to resume its use at any time in the future, everything which could be accomplished by a cease and desist order with respect to respondents' former use of the word "guaranteed" has already been accomplished by the voluntary action of respondents. Under the circumstances, a cease and desist order is not necessary. *Bell & Howell Co.*, Docket 6729; *Argus Cameras, Inc.*, Docket 6199; *Wildroot Company, Inc.*, Docket 5928. Under all the other unusual circumstances which exist in this case, as found herein, the hearing examiner is of the opinion that the public interest does not require the further prosecution of this proceeding, and the complaint herein should be dismissed.

ORDER

It is ordered, That the complaint herein be, and the same hereby is, dismissed, without prejudice to the right of the Commission to take such action in the future as the facts and circumstances may warrant.

1 U. S. QUART

DOUBLE EAGLE

MOTOR OIL

DOUBLE EAGLE LUBRICANTS, INC.
OKLAHOMA CITY, OKLA.

1 U. S. QUART

DOUBLE EAGLE

MOTOR OIL

DOUBLE EAGLE LUBRICANTS, INC.
OKLAHOMA CITY, OKLA.

DOUBLE EAGLE MOTOR OIL is scientifically

RE-REFINED

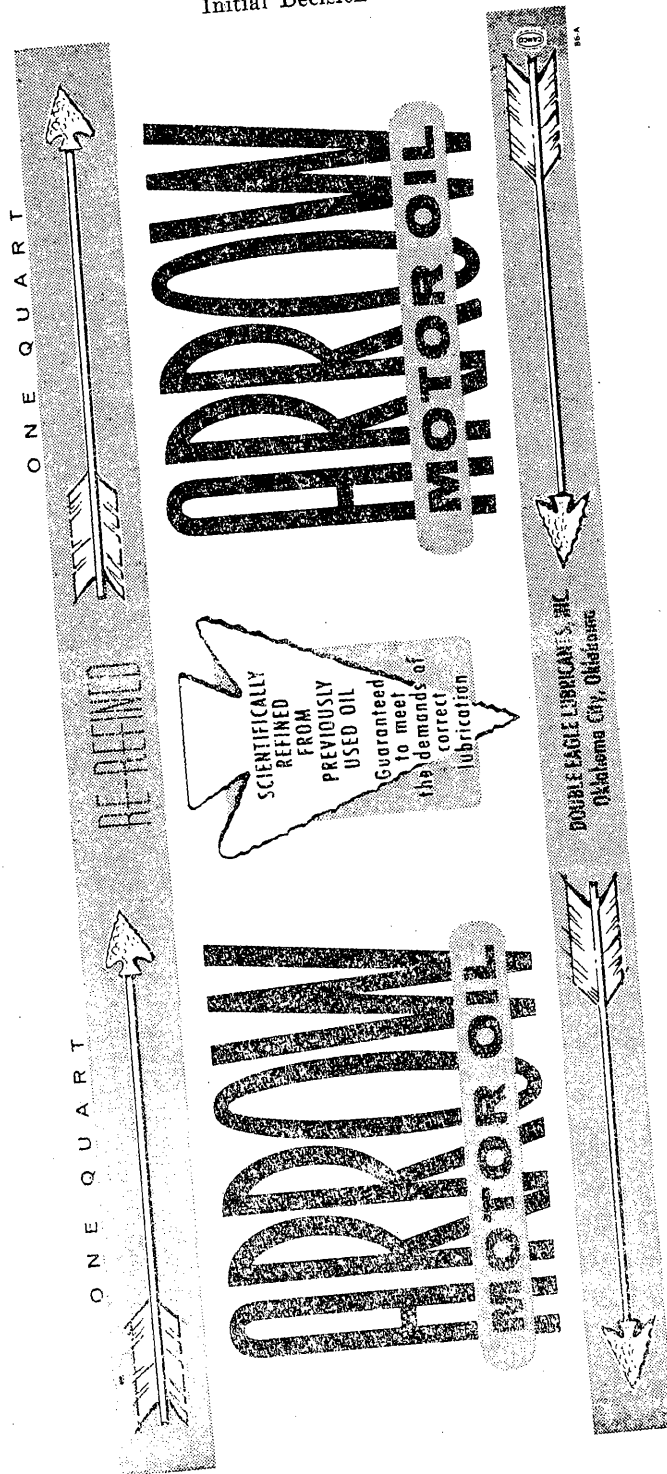
from previously used oil to meet the varied requirements of all type motors.

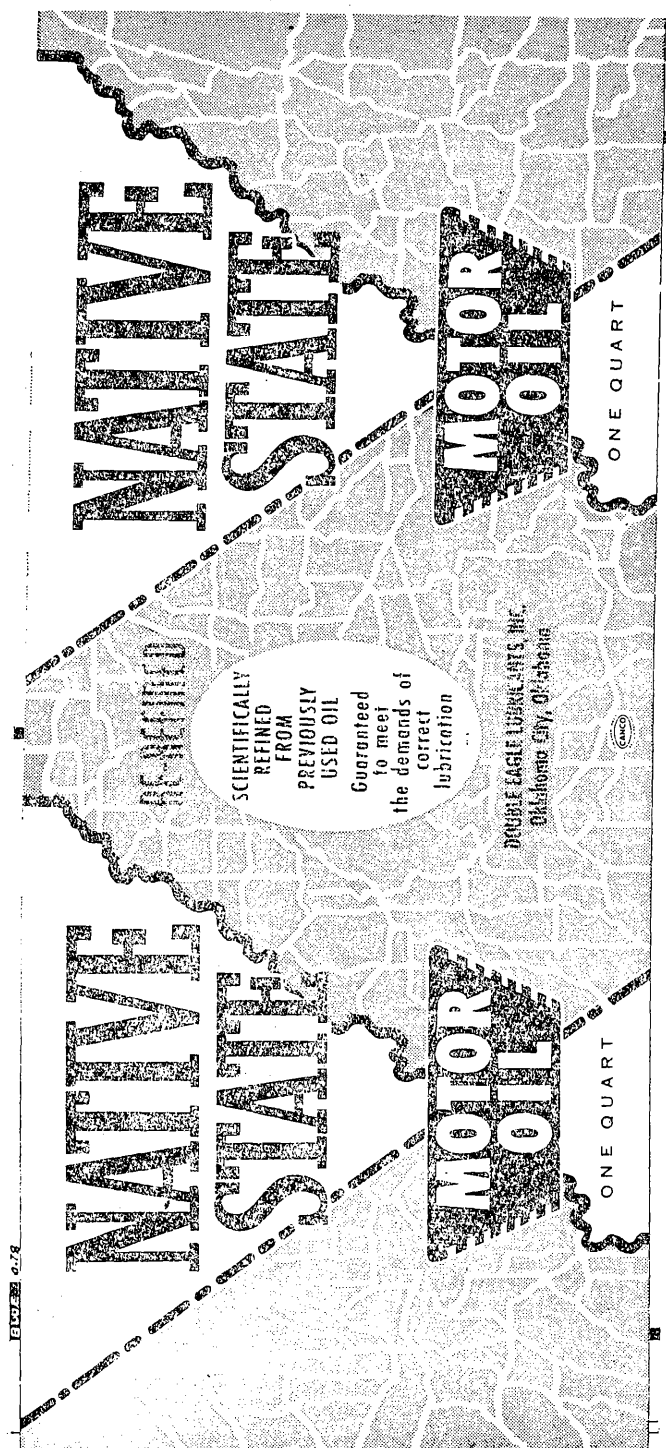
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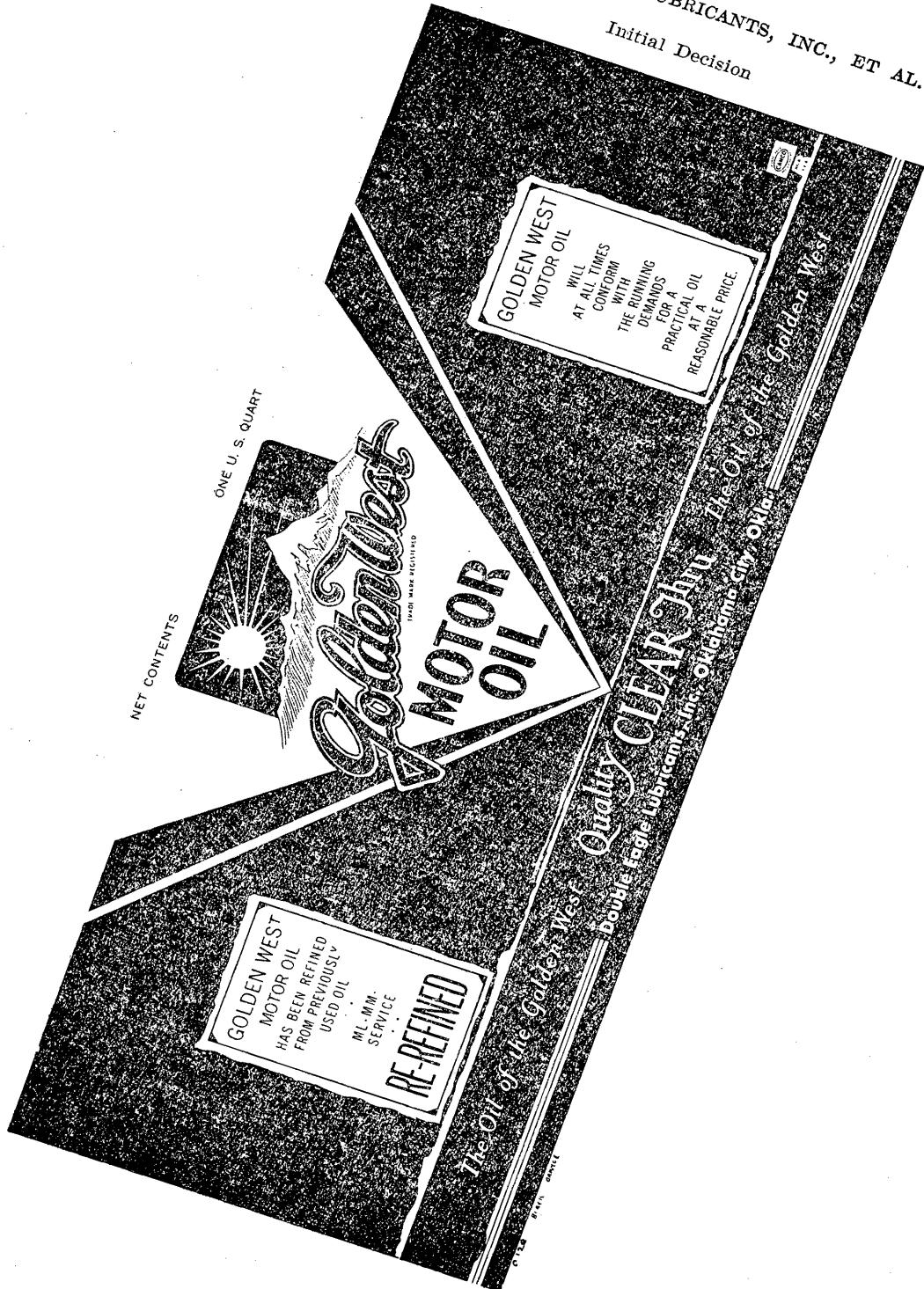
GUARDS YOUR MOTOR

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ONE U.S. QUART

HEAT

ONE U.S. QUART

HEAT

HEAT MOTOR OIL
— is a special and highly refined oil. It is testing from 100% pure motor oil and is guaranteed to give maximum protection.

HEAT MOTOR OIL
IT RESISTS HEAT'S COOL PROPERTIES WHEN ACTION GIVES SATISFACTION. IT'S SOLD EVERYWHERE.

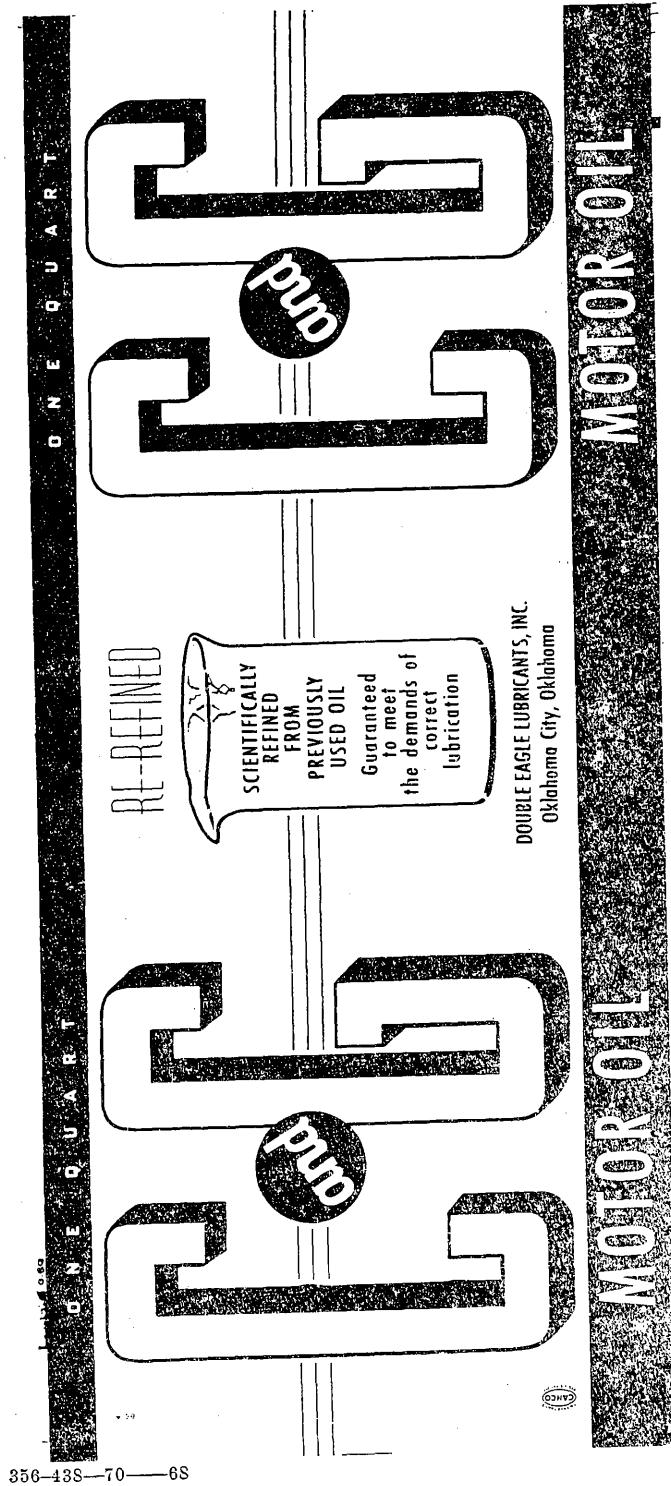
RE-REFINED
DOUBLE EAGLE, INC.
OKLAHOMA CITY, OKLA.

MOTOR OIL
RESISTS HEAT

MOTOR OIL
RESISTS HEAT

1039

Initial Decision



Opinion

66 F.T.C.

OPINION OF THE COMMISSION

OCTOBER 22, 1964

By MACINTYRE, *Commissioner*:

Respondents are charged with violating Section 5 of the Federal Trade Commission Act in their sales of lubricating oil by failing to make adequate disclosure of the fact that this product had been previously used. Specifically, the complaint alleges that in some instances respondents' containers bore no marking of any kind indicating the oil had been used and that in other instances, when the disclosure was made, it was neither clear nor conspicuous. In addition, the complaint attacks respondents' use of the word "guaranteed" as deceptive on the ground that the limitations of the guarantee were not disclosed. The hearing examiner dismissed the complaint, finding that respondents had not misrepresented the nature of their product and that they had in good faith abandoned the challenged guarantee claims. The case is now before us on the appeal of complaint counsel from the initial decision.

We agree with the examiner's finding that the record does not contain substantial evidence to support the charge that respondents, on occasion, failed to make any disclosure on the containers of lubricating oil sold in commerce that this product had been previously used. The primary issue now confronting us is therefore whether the disclosures actually made by respondents are sufficiently clear and conspicuous to adequately put the public on notice as to the origin of respondents' product. Specifically, the resolution of this question hinges on the determination of whether the legend "re-refined from previously used oil" and similar descriptions on the side or back panel rather than on the front panel of respondents' cans are sufficient to alert the prospective purchaser to the nature of respondents' product.¹

In this connection, respondents assert in effect that the Commission is estopped from attacking respondents' labeling on the ground that the same labels had already been approved by the Commission through its Compliance Division and its General Counsel when the individual respondents were advised of their obligations under the cease and desist order previously issued against them for practices similar, if not identical, to those under consideration here, in Docket 6432.² Since that order was issued in 1958, respondents' organization and business

¹ By the front panel, for the purposes of this proceeding, is meant that portion or portions of the can featuring the trade or brand names used by respondents, designed to present a more attractive appearance than other parts of the can for display purposes.

² *Frank A. Kerran, et al., doing business as Double Eagle Refining Co.*, 54 F.T.C. 1035 (1958), *aff'd*, 265 F. 2d 246 (10th Cir. 1959), *cert. denied*, 361 U.S. 818 (1959).

has not markedly changed, except that the individual respondents subsequently incorporated part of their business under the name Double Eagle Lubricants, Inc.,³ which is also named as a party in this proceeding.

The previous order directed against the individual respondents prohibits them from representing, contrary to fact, that their oil is refined or processed from other than previously used oil and from selling previously used oil without disclosure of such fact in their promotional materials and without a clear and conspicuous statement to that effect on their containers. In 1960, the General Counsel and the Compliance Division approved certain of the labeling which is the subject of this proceeding. Subsequently, however, in the summer of 1961, respondents were advised that the Commission, upon consideration of this matter, had determined that the requirement of a clear and conspicuous disclosure necessitated that such statements appear on the front panel of the container.

Respondents argue, among other things, that the rescission of the previous approval of the labeling under attack in this case is an abuse of discretion on the part of the Commission and they have refused to comply with the requirement that the disclosure be put on the front panel of their cans. Disregarding, therefore, the inclusion of the corporate respondent, the real issue posed by this case is whether respondents should be put under another order containing an additional proviso specifically requiring that the disclosure of the origin of respondents' oil be placed on the front panel of their containers.

The Commission realizes that changes in the design and labeling of respondents' cans may be time consuming and expensive. A directive that changes be made in respondents' labeling after initial approval by the Commission's staff of certain of these containers is not to be undertaken lightly. Nevertheless, the Commission is charged with protecting the public interest by prohibiting unfair and deceptive acts and practices. It cannot be deterred from that task by a prior mistaken action either on its own part or by its staff.⁴ The appropriate manner of disclosure, therefore, remains to be defined in this proceeding.

Complaint counsel challenges the examiner's evaluation of the evidence, while respondents assert there could be no finding of deception on the basis of the testimony in this record. It is unnecessary to deal with these contentions. The Commission has before it, as part of the

³ This corporation is wholly owned by the individual respondents and members of their family (tr. 23).

⁴ Cf., *NLRB v. Baltimore Transit Co.*, 140 F. 2d 51, 55 (4th Cir. 1944), cert. denied, 321 U.S. 795 (1944); and *P. Lorillard Co. v. Federal Trade Commission*, 186 F. 2d 52 (4th Cir. 1950).

record, the oil containers which the complaint charges are inadequately and deceptively labeled. Our finding on the issue will be based on our independent examination of these cans. The principle that the "Commission may, where appropriate, predicate a finding of deception on its own visual examination of the alleged means of deception, unassisted by 'consumer testimony' " ⁵ has, by this time, of course, been established conclusively. ⁶

The fact that in the absence of a clear and conspicuous statement on the can to the contrary, the public would assume that the oil contained therein is new or virgin oil, is not disputed. ⁷ The disposition of this case on appeal hinges solely on the adequacy of the disclosure on respondents' containers. Turning to the exhibits themselves, it is clear that when the front panel of respondents' container is squarely in front of the viewer, the required disclosure as to the nature of the oil is invisible. From the design of these containers it is obvious that they are intended for display with the front panel on which the brand name is imprinted facing the prospective customer so as to attract his attention. ⁸ As a result, the consuming public in many, if not most, instances will not receive the benefit of the explanatory legend respondents place on the side or back panels of their cans. The required disclosure, if on such a back panel, is not sufficiently conspicuous to give the public adequate notice of the nature of respondents' lubricating oil. The fact that some members of the public would be sufficiently curious to pick up the can and turn to the descriptive material on the back or sides of respondents' containers does not vitiate the fact that many members of the public would not be possessed of such an inquiring nature. The crucial point is that respondents' labeling has the capacity to mislead. The protection of the public therefore necessitates

⁵ *The Papercraft Corporation*, 63 F.T.C. 1965, Docket 8489, December 24, 1963.

⁶ *Zenith Radio Corporation v. Federal Trade Commission*, 143 F. 2d 29 (7th Cir. 1944).

⁷ A finding to this effect has already been made in the prior proceeding involving these respondents, the Commission stating:

"* * * It is clear that in the absence of adequate disclosure to the contrary, the public assumes and has the understanding and belief that oil which is offered to it in regular channels of trade is oil refined from crude instead of oil derived from used oil. * * *"
(*Frank Kerran, et al., supra* n. 2, at 1041.)

In these hearings, it may be noted, individual respondent Cameron Kerran admitted:

"Yes, sir. I assume that it is new oil or virgin oil if there is no statement on the can to the contrary." (Tr. 122.)

⁸ No testimony on this point is needed, for this finding is adequately supported by the appearance of these exhibits alone. Nevertheless, it is interesting to note that the individual respondent testifying in this proceeding conceded:

"Q. Now, your statement about a particular side of the can, I believe that you said that you tried to get the filling stations to show your brand, is that correct?

"A. Yes, sir.

"Q. And that is why you put your brand on your can isn't it?

"A. Yes, sir." (Tr. 181.)

The fact that due to carelessness or other reasons the front panel may not always be facing out is immaterial here.

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Final Order

the imposition of an order requiring respondents, including the corporate respondent, to disclose the nature of their oil on the front of their containers.

It should be further noted that the obligation to disclose the origin of used oil on the front panel of the container does not rest on these respondents alone. This requirement has been extended to all distributors and sellers of reclaimed or reprocessed oil by the "Trade Regulation Rule Relating to Deceptive Advertising and Labeling of Previously Used Lubricating Oil" which is to become effective January 1, 1965.⁹ In short, respondents' obligations under this order, as a practical matter are coextensive with those spelled out by the Commission for the rest of the industry.

Since the respondents will have to change their labeling to comply with the terms of the new order, as well as the Trade Regulation Rule, there is no necessity for dealing with the allegation that use of large print for the term "Re-refined" on the containers has had the tendency to enhance the deception charged. The appropriate typography under the "clear and conspicuous" requirement of the order can best be settled in conference with respondents in the compliance phase of this proceeding. As to the false guarantee charge, we see no reason for disturbing the examiner's findings and conclusions on this point and the appeal of complaint counsel directed to that issue will accordingly be denied.

An appropriate order, directing respondents to cease and desist from the practices found unlawful, will issue and the examiner's initial decision, as modified to conform to the findings and conclusions expressed herein, is adopted as the decision of the Commission.

FINAL ORDER

This matter has been heard by the Commission on the appeal of counsel in support of the complaint from the initial decision of the hearing examiner and upon briefs and oral argument in support thereof and in opposition thereto. The Commission has determined that the appeal of complaint counsel should be granted in part and denied in part and that the initial decision, as modified and supplemented to conform to the findings and conclusions in the Commission's opinion, shall be adopted as the decision of the Commission. Accordingly,

It is ordered, That respondents Double Eagle Lubricants, Inc., a corporation, and its officers, and Frank A. Kerran and Cameron L. Kerran, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any

⁹ 29 Fed. Reg. 11650 (1964).

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 lubricating oil, do forthwith cease and desist from:

1. Advertising, offering for sale or selling, any lubricating oil which is composed in whole or in 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 the advertising and sales promotion material, and by a clear and conspicuous statement to that effect on the front panel or front panels on the container.

2. Representing in any manner that lubricating oil composed in whole or in part of oil that has been manufactured, reprocessed or re-refined from oil that has been previously used for lubricating purposes, has been manufactured from oil that has not been previously used.

It is further ordered, That the initial decision, as modified and supplemented by the findings and conclusions in the accompanying opinion be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That when the order in this proceeding becomes final respondents Frank A. Kerran and Cameron L. Kerran are relieved of their obligation to file reports of compliance under the cease and desist order in Docket 6432.

It is further ordered, That respondents 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

NATIONAL RESEARCH CORPORATION ET AL.

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