

Order

70 F.T.C.

IN THE MATTER OF

MOHAWK REFINING CORPORATION ET AL.

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

Docket 6588. Complaint, July 17, 1956—Decision, Sept. 23, 1966

Order modifying a cease and desist order dated February 14, 1958, 54 F.T.C. 1071, requiring a processor of lubricating oil to cease advertising its product without disclosing that it is re-refined or reprocessed, by ordering such disclosure be made on the front panel or panels of the container.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO CEASE AND DESIST

The Commission on February 14, 1958 [54 F.T.C. 1071], having issued its order to cease and desist against respondents herein providing as follows:

It is ordered, That respondents, Mohawk Refining Corporation, a corporation, and John E. C. Stroud, C. Kenneth Johnes, and William L. Ashby, individually and as officers of Mohawk Refining Corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of lubricating oil in commerce, as "commerce" is defined in the Federal Trade Commission Act, do 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.

And the Commission on August 10, 1966, having served upon respondents its order to show cause why this proceeding should not be reopened and its order of February 14, 1958, be modified to read as follows:

Order

It is ordered, That respondents, Mohawk Refining Corporation, a corporation, and John E. C. Stroud, C. Kenneth Johnes, and William L. Ashby, individually and as officers of Mohawk Refining Corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of lubricating oil in commerce, as "commerce" is defined in the Federal Trade Commission Act, do 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 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;

(3) 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.

And respondents by their attorney having filed an answer dated September 7, 1966, opposing said modification, and

The Commission being of the opinion that neither the order to show cause nor the answer thereto raises any substantial issue of fact requiring resolution, and

The Commission for the reasons set forth in its order to show cause being of the opinion that the public interest will be best served by reopening the proceeding herein and modifying its order to cease and desist dated February 14, 1958,

It is ordered, That the proceeding herein be, and it hereby is, reopened and the Commission's order of February 14, 1958 [54 F.T.C. 1071], be, and it hereby is, modified by substituting the modified language proposed in its order to show cause dated August 9, 1966, for the prohibitory preamble and the paragraphs numbered 1 and 2 of its order to cease and desist dated February 14, 1958.

Commissioner Elman dissented, and has filed a dissenting statement.

OPINION OF THE COMMISSION

BY REILLY, *Commissioner*:

On August 10, 1966, the Commission served upon respondents an order to show cause why the proceeding resulting in its cease and desist order of February 14, 1958, should not be reopened and the order modified to bring its provisions into conformity both with the Commission's Trade Regulation Rule Relating to Deceptive Advertising and Labeling of Previously Used Lubricating Oil, effective September 1, 1965, and with the wording of more recently issued cease and desist orders in similar matters. The purpose of the show cause order as set forth therein was to effect uniform and equal treatment and to require the same standards of performance of all respondents in like situations. The order to show cause was one of several directed to firms engaged in the sale of re-refined lubricating oil subject to Commission orders to cease and desist.

As proposed in the order to show cause, the cease and desist order of February 14, 1958, as modified would read:

It is ordered, That respondents, Mohawk Refining Corporation, a corporation, and John E. C. Stroud, C. Kenneth Johnes, and William L. Ashby, individually and as officers of Mohawk Refining Corporation, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of lubricating oil in commerce, as "commerce" is defined in the Federal Trade Commission Act, do 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 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.
- (3) 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.

The original order to cease and desist did not include Paragraph (3) above and Paragraph (2) of the original order required disclosure only "... on the container" rather than more

specifically “. . . on the front panel or front panels on the container.”

In their answer dated September 7, 1966, respondents in substance cite three reasons why the proposed modification should not be made.

First, they argue that the modified language is unnecessary because it merely restates the Commission's Trade Regulation Rule Relating to Deceptive Advertising and Labeling of Previously Used Lubricating Oil in substantially the same language; because both respondents and other re-refiners are subject to the Trade Regulation Rule anyway, and because respondents have been and are now voluntarily making the front panel disclosure required by the Rule.

Our answer to this is that a Trade Regulation Rule, however effective in procuring voluntary compliance with the statutes administered by the Commission, does not have the same degree of proscriptive force as an order to cease and desist; and absent a showing that the public interest would be better served by the substitution of a less rigorous restraint in place of a presently effective cease and desist order, the Commission has no warrant in doing so.

Secondly, respondents aver that the proposed modification will not accomplish the intended result of uniformity and equality of treatment “. . . but rather would merely reemphasize the lack of such uniformity of treatment under present orders.”

This is merely a conclusionary statement which does not raise any issue of fact. The Commission is obviously not concerned with bringing about uniformity where there are differences among outstanding orders dictated by differing fact situations and differing violations. It is simply addressing itself to the task of achieving uniformity in those areas, notably front panel disclosure, where outstanding orders are susceptible of similarity of treatment.

Thirdly, respondents state that the differing language between the proposed order and the Commission's Trade Regulation Rule will require respondents to make “. . . wholly unnecessary determinations whether and to what extent the language differences might have substantive significance”

This is wholly groundless. Respondents have conceded in their answer that the Commission's Rule and the proposed language changes in the order are in effect the same and that the new language does not in any way differ in meaning from the language of the Rule. Respondents' primary obligation is to comply with the

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order. Minor differences between the order and the Rule should cause it no concern.

Neither the order to show cause nor respondents' answer raises any substantial issues of fact warranting assignment of this matter to a hearing examiner. An appropriate order will issue reopening the proceeding and modifying the Commission's order to cease and desist dated February 14, 1958, in accordance with the proposed changes in our order to show cause dated August 9, 1966.

Commissioner Elman dissented, and has filed a dissenting statement.

DISSENTING OPINION

BY ELMAN, *Commissioner*:

I cannot agree that a desire for symmetry is sufficient reason for modifying the order against respondents. So long as respondents continue to comply voluntarily with the Trade Regulation Rules, there is neither need nor justification for expanding the scope of the order to include the requirements of those Rules.

I also disagree with the refusal to grant respondents a hearing. If they were charged with violating the Rules, respondents would be afforded a hearing; but since they have voluntarily complied with the Rules, their request for a hearing is denied. I fail to see either the logic or the fairness in this action.