

Complaint

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service of its products; and misrepresenting scientific tests and their results.

Appearances

For the Commission: *R. H. Brook.*

For the respondents: *pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Boise Tire Company, a corporation, and Richard E. Larson, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the public interest, issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Boise Tire Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its office and principal place of business located at 1601 Front Street, Boise, Idaho.

Respondent Richard E. Larson is an officer of Boise Tire Company. He formulates, directs and controls the policies, acts and practices of Boise Tire Company, including those hereinafter set forth. His address is the same as that of Boise Tire Company.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the business of selling and distributing tires and other automotive accessories, principally Uniroyal products.

PAR. 3. In the course and conduct of their business, respondents advertise extensively in media of interstate circulation and broadcast. Respondents have maintained, and do now maintain, a course and conduct of business in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of Uniroyal Zeta Steel Radial Tires ("Zeta Tires"), respondents have made certain statements and representations concerning such tires in media of interstate circulation. Said statements include the following:

[Zeta Tires are] Rated #1
[Zeta Tires are] #1 in quality
 #1 in design
 #1 in service
 it's just plain * * * #1

PAR. 5. Through the use of the above statements, respondents have represented, directly or by implication, that Zeta tires had been compared with all other tires, in an objective manner, using an industrywide, government or other accepted system of quality standards or grading, by independent scientific testing of contemporary applicability, and that Zeta tires had been found therein to be superior in a general category ("Rated #1") and in specific rating categories for "quality," "design" and "service." Respondents further represented, by implication, that they had evidence, in their possession or immediately available to them, adequate to support these claims.

PAR. 6. In truth and in fact, Zeta tires had not been rated or compared with all other tires, and there exists no industrywide, government or other accepted system of quality standards or grading of tires; and Zeta tires had not been rated by any independent scientific testing against all other tires in any general or specific categories. Moreover, respondents have never had evidence, in their possession or immediately available to them, to support these claims.

Therefore, the statements, representations, and practices set forth in Paragraphs Four and Five were and are false, misleading and deceptive.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive members of the public into the purchase of substantial quantities of Zeta tires under the erroneous and mistaken belief that these statements and representations are true.

PAR. 8. In the course and conduct of their business, and at all times mentioned herein, respondents have been and are now in substantial competition in commerce with corporations, firms and individuals engaged in the sale and distribution of tires and other automotive accessories of the same kind and nature as those sold by respondents.

PAR. 9. The aforesaid alleged acts and practices of respondents 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Boise Tire Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its office and principal place of business located at 1601 Front Street, Boise, Idaho.

Respondent Richard E. Larson is an officer of Boise Tire Company. He formulates, directs and controls the policies, acts and practices of Boise Tire Company, and his address is the same as that of said corporation.

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

ORDER

It is ordered, That respondents Boise Tire Company, a corporation, its successors and assigns, and its officers, and Richard E.

Larson, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of tires or any other automotive accessories, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing in writing, orally, visually or in any other manner, directly or by implication:

A. That Zeta tires have been rated "#1" as to quality, design or service;

B. That any tires or other automotive accessories have been rated or compared as to quality, grade, line, level, design, performance or other characteristics (except in conformance with a government approved or industrywide standard, if and when such is developed) unless:

1. The representation is fully substantiated by controlled scientific tests, the results and methodology of which are available for public inspection; and

2. The representation is accompanied by a clear and conspicuous statement that there are no industrywide or other accepted standards of quality or grading, that representation relates only to the private standard of the seller or manufacturer, and that the test results and methodology on which the representation is based are available for public inspection.

It is further ordered, That respondents cause the publication in the sports section of the Idaho Statesman, in large bold face type, of a retractive advertisement one quarter page in size. It shall be devoted exclusively to a clear and conspicuous statement that, contrary to previous advertisements of Boise Tire Company, neither Uniroyal Zeta Steel Radial Tires nor those of any other manufacturer have been rated by any government or accepted industrywide system, and that in fact no such system for rating or grading tires exists. This advertisement shall also include the following sentence, in 14-point block capital letters:

THIS ADVERTISEMENT IS PUBLISHED PURSUANT
TO ORDER OF THE FEDERAL TRADE COMMISSION

Said advertisement shall be published within sixty (60) days after service upon them of this order.

It is further ordered, That the respondent corporation shall

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forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment, and of his affiliation with a new business or employment, in the event of such discontinuance or affiliation. Such notice shall include respondent's current business address and a statement as to the nature of the business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
PEPSICO, INC.

Docket 8903. Interlocutory Order, July 17, 1973.

Order denying respondent's motion to dismiss the complaint.

Appearances

For the Commission: A. R. Richter, S. G. Stoker, Iva Nordlicht