

Docket 8889. Complaint, June 2, 1972—Decision, Aug. 19, 1974

Order requiring a Philadelphia, Pa., manufacturer and distributor of gasoline and other petroleum products and its New York City advertising agency, among other things to cease making false performance and uniqueness claims for its Sunoco gasoline, and using misleading demonstrations.

Appearances

For the Commission: *Wallace S. Snyder, Kaid Benfield and Craig Annear.*

For the respondents: *Robert M. Dubbs, Sun Oil Company, et al., John Harkins, Jr., Barbara W. Mather and Jon A. Baughman, Pepper, Hamilton & Scheetz, Phila, Pa., David Grossberg, Cohen & Grossberg, New York, N. Y.*

Complaint

84 F.T.C.

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 Sun Oil Company, a corporation, and William Esty Company, a 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 interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Sun Oil 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 under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1608 Walnut Street, Philadelphia, Pa.

PAR. 2. William Esty Company 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 100 E. 42nd Street, New York, N.Y.

PAR. 3. Respondent Sun Oil Company is now, and for some time last past has been, engaged in the manufacture, sale and distribution of a gasoline designated at "Sunoco" gasoline, and other petroleum products to the public.

PAR. 4. In the course and conduct of its business as aforesaid, respondent Sun Oil Company now causes, and for some time last past has caused, the said Sunoco gasoline, when sold, to be shipped from its plants and facilities to purchasers thereof located in various States other than the state of origination and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said Sunoco gasoline in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. Respondent Sun Oil Company at all times mentioned herein has been and now is in substantial competition in commerce with individuals, firms and corporations engaged in the sale distribution of automobile gasoline.

PAR. 6. Respondent William Esty Company is now, and for some time past has been, the advertising agency of Sun Oil Company, and now and for some time past has prepared and placed for publication, advertising material, including but not limited to the advertising referred to herein, to promote the sale of Sun Oil Company's gasoline.

*Reported as amended by the administrative law judge's order of Nov. 30, 1972.

PAR. 7. In the course and conduct of its aforesaid business, and at all times mentioned herein, respondent William Esty Company has been, and is now, in substantial competition in commerce with other advertising agencies.

PAR. 8. In the course and conduct of their businesses and for the purpose of inducing the sale of Sunoco gasoline, respondents employ advertising in national and regional magazines, other publications, on network and local television and radio, and through various other outlets including point-of-sale displays.

PAR. 9. Respondents' major television advertising theme associates, by statement and demonstration, two Sun Oil Company "exclusives" with enhanced or maximum power and performance in any automobile engine. The first of these "exclusives" is "Sunoco 260," the highest octane gasoline available for sale to the public and having a Research Octane Number of 102.8. The second "exclusive" is Sunoco's "Custom Blending Pump" which offers purchasers eight different gasoline blends each with a distinct octane rating. Other major gasoline distributors provide a maximum of three distinct gasoline octane blends.

Based on its "exclusive" "Sunoco 260" and "Custom Blending Pump," respondents ascribe to all eight Sunoco gasoline blends the qualities of "260 Action."

PAR. 10. Typical of the statements and representations made and demonstrations used by respondents in their advertising of Sunoco gasoline, but not limited thereto, are the following television commercials:

A. In "Trains," an automobile of unstated make, model and performance specifications is supplied with Sunoco gasoline of unstated octane rating. The automobile is then coupled with three empty railroad cars, two boxcars and a caboose, standing stationary on a siding. The automobile, after a signal from the announcer, proceeds to pull away with the load of approximately 100 tons.

ANNOUNCER: We're * * * demonstrat[ing] an "unusual" gasoline. A gasoline that will help this car's engine put out every last ounce of power it has.

What makes this gasoline unusual? It's blended with the action of Sunoco 260 * * * the highest octane gasoline at any station, anywhere.

There you have it. Sunoco 260 Action in this car is pulling over 100 tons. Not just one boxcar, but two boxcars and a caboose. This is the same 260 Action you get in every Sunoco blend. Because Sunoco's Custom Blending Pump blends just the right amount of 260 * * * into every gallon of premium, middle premiums, even regular.

You're seeing Sunoco premium deliver in this car. [Repeat of demonstration]

Let Sunoco, with 260 Action, deliver in your car.

Get Sunoco 260 Action. Action to be used. Not abused.

Complaint

84 F.T.C.

B. In "Coliseum," the message is essentially the same. An automobile of unstated make, model, and performance specifications is supplied with Sunoco gasoline of unstated octane rating. The automobile then proceeds, on cue, to pull an empty U-haul trailer of unstated weight up a ramp specially constructed over a bank of seats in the Los Angeles Coliseum.

ANNOUNCER: We're going to drive a car, pulling this trailer from the field to * * * the top of the stands to demonstrate an unusual gasoline. A gasoline that will help this car's engine put out every bit of power it has.

What makes this gasoline unusual? It's blended with the action of Sunoco 260 * * * the highest octane gasoline at any station, anywhere.

With 260 Action, the car and trailer go up the ramp just like that.

You get that same 260 Action at Sunoco * * *

Watch again as Sunoco regular * * * delivers in this car. [Repeat of demonstration.]

Let Sunoco, with 260 Action, deliver in your car.

Get Sunoco 260 Action. Action to be used. Not abused.

PAR. 11. By and through the use of the aforesaid statements, representations, and demonstrations, and others similar thereto not specifically set out herein, respondents have represented and are now representing directly, and by implication that:

A. Blending Sunoco's highest octane gasoline, "260," into Sunoco's lower octane gasolines results in blends of gasoline that by reason of their respective octane levels provide more engine power than do competing gasolines having octane ratings comparable to Sunoco's blends.

B. Blending Sunoco's highest octane gasoline, "260," into Sunoco's lower octane gasolines conveys to resulting blends of Sunoco gasoline the octane benefits of Sunoco "260," or "260 Action."

C. Only when operated on the octane of Sunoco's "Custom Blended" gasolines will automobile engines operate at maximum power and performance.

D. Said demonstrations are evidence which actually prove that Sunoco gasolines blended with "Sunoco 260 Action" are unique or unusual in that they alone provide the power necessary to enable an automobile to perform the task depicted.

PAR. 12. In truth and in fact:

A. Sunoco's gasoline blends do not provide more engine power by reason of their respective octane levels than do competing gasolines of comparable octane rating.

B. Blending Sunoco "260" into Sunoco's lower octane gasolines conveys to resulting blends of Sunoco gasoline no more octane benefits than provided by the octane level of the resultant blends.

C. Octane is a measure of motor fuel antiknock quality, and to the extent that octane relates to power and performance any gasoline of sufficient octane will provide maximum power and performance.

D. Said demonstrations are not evidence which actually prove that Sunoco gasolines blended with "Sunoco 260 Action" are unique or unusual. Other gasolines of comparable octane rating will also provide the power necessary to enable an automobile to perform the tasks depicted.

Therefore, the aforesaid statements and representations, and demonstrations used in conjunction therewith, as set forth in Paragraphs Ten and Eleven were, and are, false, misleading and deceptive.

PAR. 13.* The aforesaid advertisements and demonstrations, and others similar but not specifically set out herein, have falsely represented, and are now falsely representing, directly and by implication, that Sunoco gasoline has unique qualities not found in other brands of gasoline. With respect to octane, all automobile gasolines, regardless of brand name, will provide maximum power and performance in an automobile engine if sufficient gasoline octane is provided. The aforesaid acts and practices were, and are now, false, misleading, deceptive and unfair, and therefore constitute unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.

PAR. 14. The use by respondents of the aforesaid false, misleading, and deceptive statements, representations and demonstrations, including the misleading and deceptive statements and representations made in connection with said demonstrations, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and into the purchase of a substantial quantity of respondent Sun Oil Company's gasoline because of such erroneous and mistaken belief.

PAR. 15. 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 in commerce and unfair methods of competition in commerce in violation of Section 5 of the Federal Trade Commission Act.

*Amended by order of the administrative law judge dated Nov. 30, 1972, by striking the period at the end of said paragraph 13 and adding: ", and unfair or deceptive acts or practices in commerce."

Initial Decision

84 F.T.C.

INITIAL DECISION BY HARRY R. HINKES, ADMINISTRATIVE LAW
JUDGE

JUNE 28, 1974

PRELIMINARY STATEMENT

The Federal Trade Commission issued its complaint in this proceeding on June 2, 1972, charging respondent Sun Oil Company (herein "Sun") and respondent Esty Company (herein "Esty") with violating the provisions of Section 5 of the Federal Trade Commission Act in certain statements, representations and demonstrations involving Sun gasoline. By answer duly filed, respondents denied violating the Federal Trade Commission Act. Prehearing conferences were then held in Sept. and Nov. 1972, after which successive requests for admissions and various motions were filed and responded to. Thereafter, document and witness lists were exchanged. Hearings were conducted in Wash., D. C. and Los Angeles, Calif., in the months of Sept. 1973 and Jan. 1974. The record in this proceeding was closed Feb. 11, 1974, following which proposed findings and briefs were filed by the parties.

Any motions not heretofore, or herein, specifically ruled upon either directly or by necessary effect of the conclusions in this initial decision, are hereby denied.

The proposed findings, conclusions and briefs as submitted by the parties have been given careful consideration and to the extent not adopted by this decision in the form proposed or in substance are rejected as not supported by the evidence or as immaterial.

References to the record are made in parenthesis using the following abbreviations:

CX - Commission's Exhibit
RS - Sun's Exhibit
Ans. - Answer
Tr. - Transcript of the testimony
SPF - Sun's proposed findings
EPF - Esty's proposed findings

Having reviewed the record in this proceeding and having considered the demeanor of the witnesses as they testified, together with the proposed findings, conclusion and briefs submitted by the parties, I make the following:

FINDINGS OF FACT

1. Respondent Sun Oil Company of Pennsylvania is incorporated in the Commonwealth of Pennsylvania and its principal office and place of business is located at 1608 Walnut Street, Philadelphia, Pa. (CX 283 Relevant and material facts to which there is no dispute; SPF 1).

2. Respondent William Esty Company, Inc. is incorporated in the State of New York and its principal office and place of business is located at 100 East 42nd Street, New York, N. Y. (CX 283, par. 2; SPF 2; EPF 1).

3. Sun is now and has been engaged in the manufacture, sale and distribution of Sunoco gasoline and other petroleum products to the public (CX 283 par. 3; SPF 3).

4. Sun causes and has caused in the past Sunoco gasoline when sold to be shipped from its plants and facilities to purchasers thereof located in various states other than the state of origination and maintains and at all times mentioned herein has maintained, a substantial course of trade in said Sunoco gasoline in commerce, as "commerce" is defined in the Federal Trade Commission Act (CX 283 par. 4; SPF 4; EPF 3).

5. Sun at all times mentioned in the complaint has been and now is, in substantial competition in commerce with individuals, firms and corporations engaged in the sale and distribution of automobile gasoline (CX 283 par. 5; SPF 6).

6. Esty was at the time of the dissemination of the advertisements under consideration in this proceeding one of the advertising agencies of Sun (CX 283 par. 6; SPF 5; EPF 2).

7. Esty at all times mentioned in the complaint has been in substantial competition in commerce with other advertising agencies (CX 283 par. 7; SPF 7; EPF 4).

8. In the course and conduct of their businesses and for the purpose of promoting the sale of Sunoco gasoline, Sun and Esty employ advertising in national and regional magazines, other publications, on network and local television and radio, and through various other outlets. Sun prepares point of sale materials. The media employed in the advertising of Sunoco gasoline vary from time to time (CX 283 Par. 8; SPF 13).

9. The following television advertisements for Sunoco gasoline were disseminated to the public on network television and by spot television announcements from time to time during portions of 1971: "Train" (CX 254, 255, depicted in Storyboards CX 185 and 186); "Coliseum" (CX 256, 257, Storyboards CX 187, 188); "Son of Donahue" (CX 278, Storyboard CX 78); "Don Quixote" (CX 279, Storyboard CX 79); and "Father and Son" (CX 270, Storyboard CX 57). (Stipulated in CX 286; SPF 15).

10. The following television advertisements for Sunoco gasoline were disseminated to the public on network television and by spot television announcements from time to time during portions of 1970 and 1971:

"Wagon on the Track" (CX 259 Storyboard CX 46); "Bronco" (CX 260 Storyboard CX 47); "Chalk Talk" (CX 261 Storyboard CX 48); "Every Drop" (CX 263 Storyboard CX 50); "Pit Stop" (CX 265 Storyboard CX 52); "Sign" (CX 266 Storyboard CX 53); "Cave Man" (CX 267 Storyboard CX 54); "Classic Cars" (CX 268 Storyboard CX 55); "Tanker" (CX 269 Storyboard CX 56); "Snowflake" (CX 276 Storyboard CX 76); and "Toothache" (CX 277 Storyboard CX 77). (CX 268; SPF 15).

11. The following television advertisements for Sunoco gasoline were disseminated to the public on network television and by spot television announcements from time to time during the months of Nov. and Dec. 1971 and Jan. 1972.

"Transam Winter - 260 Action" (CX 258 Storyboard CX 45); "Open Road" (CX 275 Storyboard CX 74); and "Thompson" (CX 280 Storyboard CX 80). (CX 286; SPF 15).

12. The following television advertisements for Sunoco gasoline were disseminated to the public on network television and by spot television announcements from time to time during portions of 1969 and 1970:

"Sebring" (CX 271 Storyboard 58); "Train Station" (CX 272 Storyboard CX 59); and "Racing" (CX 273 Storyboard CX 60). (CX 286; SPF 15).

13. The following radio advertisements for Sunoco gasoline were disseminated to the public from time to time during portions of 1970 and 1971:

"If you think" (CX 281 Script CX 61); "Stop For a Moment" (CX 281 Script CX 65); "My Dad" (CX 281 Script CX 66); "Myths" (CX 281 Script CX 67); "Piece of the Action I" (CX 281 Script CX 68); "Did you know" (CX 281 Script CX 69); "Middle Road 1 and 3" (CX 281 Script CX 81); "Middle Road 2 and 4" (CX 281 Script CX 82); "Salt Rock" (CX 281 Script CX 83); "Hard Rock" (CX 281 Script CX 84); "Rythm in Blues" (CX 281 Script CX 85); "Country and Western" (CX 281 Script CX 86); "Stop a Moment Revised" (CX 281 Script CX 87); "Did you Know Revised" (CX 281 Script CX 88); and "If You Think Revised" (CX 281 Script CX 89). (CX 286; SPF 15).

14. The following print advertisement for Sunoco gasoline was disseminated to the public during the year 1970:

DX Switchover to Sunoco (CX 70) (CX 286; SPF 15).

15. The radio advertisements for Sunoco gasoline entitled "Toothache" (CX 281 Script CX 90) was provided to wholesale distributors of

Sunoco gasoline for the purpose of dissemination to the public during the year 1971 and during Jan. 1972 (CX 286; SPF 16).

16. The following print advertisements for Sunoco gasoline were disseminated to the public during the year 1971 and during Jan. 1972. Over 129 companies sell gasoline in America (CX 71); and Sunoco 260 Action gets me to the supermarket too (CX 72) (CX 286; SPF 15).

17. The Commission has charged that respondents have made, and complaint counsel contend that the foregoing advertisements make, the following representations specified in the complaint:

Paragraph 11:

a. Blending Sunoco's highest octane gasoline "260," into Sunoco's lower octane gasolines results in blends of gasoline by reason of their respective octane levels provided more engine power than do competing gasolines having octane ratings comparable to Sunoco's blend.

b. Blending Sunoco's highest octane gasoline, "260," into Sunoco's lower octane gasolines conveys to resulting blends of Sunoco gasoline the octane benefits of Sunoco "260," or "260 Action."

c. Only when operated on the octane of Sunoco's "Custom blended" gasolines will automobile engines operate at maximum power performance.

d. Said ["Train" and "Coliseum"] demonstrations are evidence which actually prove that Sunoco gasolines blended with "Sunoco 260 Action" are unique or unusual in that they alone provide the power necessary to enable an automobile to perform the tasks depicted.

* * * * *

Paragraph 13:

* * * Sunoco gasoline has unique qualities not found in other brands of gasoline. With respect to octane, all automobile gasolines, regardless of brand name, will provide maximum power and performance in an automobile engine if sufficient gasoline octane is provided. * * *

18. Certain portions of these representations are not in dispute here. Respondents admit that their advertisements represented that power and performance benefits would be derived from Sun's blended gasolines. It is further admitted that the advertisements represented that these benefits are conveyed through the blending of Sunoco 260 into the intermediate blends, such blending making them unusual (Foster, Tr. 860). There is no dispute that Sunoco 260 was consistently advertised throughout the campaign as the highest octane gasoline available to motorists (Foster, Tr. 873).

19. Typical of the advertisements of Sun which were received in evidence in support of the charges in the complaint were the following:

Bronco (CX 260, 47): Get the action of the world's highest octane gasoline. Sunoco 260 Action.

Chalk Talk (CX 261, 48): No other station can give you the action of the world's highest octane gasoline.

Every Drop (CX 263, 50): Every drop of every tenth of every gallon of Sunoco from regular up you get the action of the world's highest octane gasoline.

Initial Decision

84 F.T.C.

Cave Man (CX 267, 54): Every gallon gives you 260 Action * * * only Sunoco gives you the action of the world's highest octane gasoline. So, ipso facto. All gasolines are not created equal.

Tanker (CX 269, 56): The custom blending pump blends it in automatically. So every gallon gives you Sunoco 260 Action.

Son of Donahue (CX 278, 78):

I use a Sunoco middle premium in my family car * * * and it has 260 Action, the action of the world's highest octane gasoline at any station. 260 Action. That's the difference at Sunoco.

Middle of the Road #4 (CX 281, 82): Only Sunoco has the action of 260 * * * highest octane gasoline at any station anywhere * * * Sunoco blends 260 into premium, middle premiums even regular. That's 260 Action, and you can't get it any where else.

If you think revised (CX 281, 89): What's 260 Action? Action you can't get at any other gasoline station. 260 Action. The action of the world's highest octane gasoline.

20. Typical of the statements and representations in the TV advertisements disseminated were the following:

a. In "Trains," an automobile is supplied with Sunoco gasoline of unstated octane rating. The automobile is then coupled with 3 empty railroad cars, two box cars and a caboose standing stationary on a siding. The automobile, after a signal from the announcer, proceeds to pull away with a load of approximately 100 tons.

Announcer: We're coupling this automobile to a box car weighing more than 34 tons to demonstrate an unusual gasoline - a gasoline that will deliver every last ounce of power designed into this car's engine * * * what makes this gasoline so unusual is that it's blended with the action of Sunoco 260, the highest octane gasoline, at any station, anywhere. There you have it. 260 Action pulling not just 1 but 2 box cars and a caboose * * * over 100 tons being moved by the same 260 Action you get in every Sunoco blend. The custom blending pump blends just the right amount of 260 into every gallon of premium, middle premiums, even regular. Let Sunoco with 260 Action deliver in your car.

b. In "Coliseum" an automobile is supplied with Sunoco gasoline of unstated octane rating. The automobile then proceeds to pull an empty U-Haul trailer up a ramp especially constructed over a bank of seats in Los Angeles Coliseum.

Announcer: We're going to drive a car pulling this trailer from the field to * * * to the top of the stands to demonstrate an unusual gasoline. A gasoline that will help this car's engine put out every bit of power it has. What makes this gasoline unusual? It's blended with the action of Sunoco 260 * * * the highest octane gasoline at any station anywhere. With 260 Action the car and trailer go up the ramp just like that. You get the same action at Sunoco * * * The custom blending pump blends just the right amount of 260 into every gallon of premium, middle premiums, even regular. Let Sunoco with 260 Action deliver in your car.

21. The subject matter of the two challenged advertisements, "Train" and "Coliseum" is "power" (CX 283; SPF 19).

22. None of the representations alleged in paragraphs 11 and 13 of

the complaint are made expressly in any advertising for Sunoco gasoline (SPF 24; Preston, Tr. 405).

23. The issue, therefore, is whether the representations alleged are made by implication in the challenged advertisements (SPF 26).

24. The challenged advertisements convey to readers, listeners, and viewers the following impressions:

(1) Sunoco 260 is unique in that it is the highest octane gasoline available to consumers.

(2) Octane is associated with automobile power and performance.

(3) Sunoco 260 is therefore unique in its ability to create octane benefits including power in automobile engines.

(4) Sunoco 260, the highest octane gasoline available, is blended into Sunoco's intermediate grades of gasoline.

(5) Because Sunoco's blended grades of gasoline consist partly of Sunoco 260, the highest octane available, they are thereby endowed with an attribute called "260 Action."

(6) "Sunoco 260," "High Octane," "Power," and "260 Action" are all associated with each other and with Sunoco gasoline generally and are interchangeable attributes.

(7) Sunoco's blended grades of gasoline consisting partly of Sunoco 260, the highest octane available, are therefore uniquely able to create octane benefits including power in automobile engines.

(8) Sunoco's blended grades of gasoline, because of their unique ability to create octane benefits, are more powerful than their competitors.

(9) Because they are more powerful than their competitors only Sunoco's gasolines with "260 Action" are able to provide automobile engines with the power necessary to perform the tasks depicted.

25. A test of consumer perception was initiated by respondent Esty and conducted by the Russell Marketing Research in May 1971 (CX 123; Russell, Tr. 780). The study was limited to a group of male residents of Bergen County, N. J., half of whom were Sunoco users who were listed in the telephone book, are home in the evening, watched the particular television program on which the advertisement was run and own a car for which they purchased the gasoline. These subjects were asked to rate Sunoco and two competing gasolines with regard to power, performance and quality. They were then asked to observe the advertising program for Sunoco and again rate the 3 gasolines. In addition they were asked what the main point was of the commercial about Sunoco, what else they could tell about the commercial, what they remembered seeing in the commercial and what they remembered hearing in the commercial. The subjects' comments were then paraphrased by the

interviewers and an analysis of the results made by respondent Esty for Sun (CX 110, 123, 252; Russell, Tr. 781-782).

26. The Russell Marketing Research Company has had vast experience in the marketing survey area, having conducted four or five thousand of such surveys over a 25-year period (Russell, Tr. 778). Furthermore, the procedures followed in the survey were standard ones normally used by marketing research organizations (Russell, Tr. 799).

27. Some of the comments of the viewers surveyed as paraphrased by the Russell Marketing Research interviewer were:

That Sunoco gasoline with 260 in it gives you a lot more power. Because it is a high octane gas it gives your car a better performance * * * Sunoco is the only gas with such a high octane gas which will give your car a better performance.

Sunoco makes all its gas with high octane. The 260 Action of Sunoco is supposed to make your car have more power because of its high octane * * * just how great Sunoco premium 260 gasoline is for your car. It is high in octane so it increases the performance of your car.

Sunoco has the highest octane power in today's gas.

All Sunoco gasolines have higher octane meaning extra power.

That Sunoco contains the highest amount of octane than any other gasoline and that increases the performance of your cars' engine.

That Sunoco gasoline is the highest octane gasoline of any gasoline around.

That they had the best gas for your car with 260 octane.

Only Sunoco can give such power (CX 123, 110).

28. Although the "Train" commercial (CX 254) which was tested differs from most of the challenged advertisements in that it is one of only two visual demonstration advertisements under challenge, it contains language similar to that found throughout the "260 Action" campaign. It is not unreasonable to infer that viewers would perceive other "260 Action" commercials similarly.

29. Many of those surveyed rated Sunoco gasolines higher after seeing the "Train" commercial than they had before seeing that commercial. According to Mr. Russell, however, the changes were not statistically significant (Russell, Tr. 786-787). Nevertheless, Mr. Trepte of respondent Esty told Sun that the study showed improvement in respondents' attitudes toward Sunoco's power, performance and quality after viewing the "Train" advertisement (CX 123).

30. The viewers' responses as paraphrased by the Russell Marketing Research interviewers cannot be considered as verbatim reports. The paraphrased reports, however, having been made by experienced personnel of that agency after detailed instructions, must be given considerable probative weight.

31. Respondents offered no independent survey, test of perception,

consumer testimony or opinion testimony to rebut the findings of the Russell Marketing Research.

32. Dr. Ivan L. Preston is a professor of advertising and communications at the University of Wisconsin. He teaches certain courses in communications and advertising at the University, has been employed by various universities, has had experience in advertising working with two advertising agencies, reviews published materials in the field of advertising as well as law review articles in the advertising field and is a member of certain societies or organizations concerned with advertising. He has conducted research on consumer's understanding of advertisements which he described as most closely related to his analysis in this action. These articles were introduced by respondents as RS 1 and RS 2 (Preston, Tr. 292-302).

33. Dr. Preston reviewed two of the challenged advertisements, the 60 second versions of "Coliseum" and "Train." He stated:

* * * The Principal process of communication and reception of ideas that occurred in the commercials was a consideration of the comparison between the term "260" and the phrase "260 Action." Now, by that linguistic or semantic analysis of these two terms, they would be expected to refer to approximately the same thing * * *

Viewers would expect the phrase "260 Action" to be a reference to the fact that those gasolines given that label would contain 260, and the octane level of 260, and the resulting power benefits (Preston, Tr. 303).

It represents a demonstration of something that can presumably be performed only with the gasolines that have the octane levels and resulting power of "260 Action" * * * the word "unusual" has the latent meaning of "unique" in that context (Preston, Tr. 303).

34. Dr. Preston saw no reference, directly or indirectly, in any advertisement he reviewed to phosphorous or any other gasoline additive, composition or ingredient other than octane (Preston, Tr. 304-306). He did, however, state that the ads referred to helping the engine achieve power (Preston, Tr. 401).

35. Dr. Preston's testimony constituted the sole expert opinion at the hearing as to what representations were made by any of the challenged advertisements.

36. At complaint counsel's request Dr. Preston conducted a small survey in May 1973 testing student reaction to the "Train" and "Coliseum" advertisements. 303 University of Wisconsin students viewed film supplied by Sun of either "Train" or "Coliseum" twice and then responded to a series of 11 questions designed to elicit their opinion of "what the advertiser appears to be telling you." (CX 191 p. 4).

37. The subjects were asked to mark as "accurate" which of the 11 statements appeared to them to have been implied or stated in the

advertisement. The following percentages of the sample marked as "accurate" the following key statements:

(5) You can get the power supplied by Sunoco 260 Action only by buying Sunoco gasoline: 78 percent.

(6) When your gasoline is blended with the action of Sunoco 260 you will get all the benefits of using the highest octane gasoline at any station anywhere: 61 percent.

(7) You're seeing a stunt which a car can perform only if it is powered by Sunoco's 260 Action: 48 percent.

(8) Gasolines blended with the action of Sunoco 260 are unusual because they provide more power than you would get with other gasoline: 79 percent.

(9) This demonstration shows that gasolines with 260 Action are unusual: 71 percent.

(10) Having 260 Action means that you have the highest octane gasoline available at any station anywhere: 67 percent.

38. Although the results of "Train" and "Coliseum" are not numerically projectable the survey is of some value in indicating how some consumers generally reacted to the "260 Action" campaign. Dr. Preston testified, however, that while the survey was not a representative survey he considered it to be reliable as an indication of the general public's reaction inasmuch as the subjects, university students, would be apt to have less confusion than the general public (Preston, Tr. 333). As a consequence, the percentage figures would be higher with the general public. Although Dr. Preston conceded that some survey participants would view as accurate logically fallacious premises drawn from an advertisement consisting of no more than a blank piece of paper with the word "advertisement" appearing on it and a company name such as "RCA" and that he would get accurate responses to other logically fallacious propositions derived from selling themes of other gasoline marketers and their advertising and that his test conditions were not the same as actual television viewing in the home and, finally, that the survey participants in his test were asked to look for implications, I conclude that Dr. Preston's test tends to support the allegations of the complaint as to the representations made in the advertisements of the respondents.

39. Dr. Raymond A. Bauer, a witness called by respondent Sun, offered a critique of Dr. Preston's testimony. According to Dr. Bauer, Dr. Preston's 1971 survey, RS 1, showed that the subjects designated 54 percent of the logically valid propositions as accurate as well as 57 percent of the logically invalid propositions. These results were so close to the 50-50 results of a chance designation as to support no conclusion

other than the subjects couldn't readily distinguish between them.

40. Dr. Bauer also concluded that advertising messages are more apt to be accepted as accurate despite logically invalid propositions.

41. Dr. Bauer concluded that since approximately 62 to 65 percent of the responses to the logically fallacious propositions were deemed accurate no conclusions can be drawn from this methodology. Dr. Bauer also criticized Dr. Preston's tests in that the subjects were forced to decide whether a statement was accurate or inaccurate with no middle ground; that the study was conducted in a controlled situation immediately after the subjects were given prime attention to the advertisements; that the subjects were not asked simply to state his recall of the advertising; and because no controls were used to eliminate false positive responses.

42. Dr. Bauer, unlike Dr. Preston, has not conducted any tests himself or compiled any data regarding the challenged advertising in this case. Nor did Dr. Bauer express any personal opinion as to what the advertising may or may not imply. Although Dr. Bauer worked with and associated with the conduct of consumer recall or consumer perception tests, he has not himself conducted such tests (Bauer, Tr. 1184,1225).

43. Comparisons between Preston's earlier tests (RS 1 and RS 2) and the current tests (CX 191) may be misleading. Thus in the earlier tests Dr. Preston had chosen a group of advertisements which were in his opinion highly capable of leading the subjects to illogical behavior. In CX 191 the statements chosen were from the Commission's complaint (RS 2, pp. 2 and 3; RS 1, pp. 2 and 3; Preston, Tr. 380, 382, 392-393). Moreover, since RS 1 and RS 2 involved advertisements in print media while CX 191 involved television advertisements, media differences could affect the results (Bauer, Tr. 1233-1234). Finally, RS 1 and RS 2 were based on the number of different products whereas CX 191 was based only on Sunoco gasoline which might affect the test results (Bauer, Tr. 1234-1235).

44. Accepting Dr. Bauer's hypothesis that there is a valid basis for comparison of CX 191 with Dr. Preston's earlier works, RS 1 and RS 2, the affirmative responses to several of the key statements in CX 191 (Finding 37) were nevertheless substantially higher than the average result obtained in Dr. Preston's earlier works.

45. Power is the subject matter of the two ads specifically described as typical in the complaint, "Train" and "Coliseum" (Stip. CX 283).

46. Every advertisement stressed "highest octane" while none even comes close to mentioning phosphorous or additives.

47. In none of the campaign's planning documents is there any reference to phosphorous as a justification or a basis for any of the claims

made. At meetings between respondents in Aug. 1967 an Esty representative suggested advertising Sunoco's new "Custom-blending" pump face in a manner utilizing "the fact that there is just the right amount of Sunoco 260, the highest octane available in all blends starting with 200" (CX 16). Similar thoughts were conveyed in a later report and a later meeting (CX 17).

48. In Aug. 1970 officials of Esty wrote to officials of Sun:

The current "260 Action" campaign focuses in on two of the key attributes - "the action of the highest octane gasoline" and "the custom blending system" * * * Past consumer research has told us that among adult men octane is considered to be a measure of quality -- the higher the octane, the higher the quality of the gasoline (CX 31).

49. In Apr. 1971 a similar communication from Esty to Sun read:

The overall objective * * * is to successfully establish Sunoco as an important new high quality brand of gasoline that offers consumers performance advantages over all other gasolines.

Build awareness of Sunoco's performance superiority by stressing that some 260 is available in all blends from regular on up * * * the recommended plan is based on the following considerations: * * * to clearly establish that Sunoco 260 is the world's highest octane gasoline and begin to communicate the idea that the custom blending pump puts some of 260 in every blend (CX 160). See also CS 39 where Esty told Sun:

* * * our task is to effectively motivate them [users] to change to Sunoco by offering some benefit which is quite tangible and which they will perceive as *not available* from their current brand.

Also in Apr. 1971, Esty reported:

The results of this study tend to confirm our belief that a performance strategy based on 260 "world's highest octane" claim is meaningful and believable to consumers * * * we feel we have laid a sound foundation of awareness of 260 Action the world's highest octane claim. Placing greater emphasis on the performance value individual blends derive from 260 we will make our story more relevant, meaningful and persuasive in terms of a specific consumer benefit (CX 143).

50. In none of the texts of advertising presentations is there any reference to phosphorous or any other additive as the basis or justification for the campaign. Respondents introduced no text of an advertising presentation containing such a reference.

51. Several documents were introduced in evidence during the hearings purporting to show a phosphorous advantage in Sunoco's blended gasolines over their competitors (RS 23, 24 and 25). Messrs. Dugan and Foster, employees of respondent Sun, testified that RS 23, 24 and 25 as well as oral presentations concerning phosphorous were communicated by Sun to its advertising department and there was, in addition, testimony that Sun's phosphorous advantage was one of the elements in the challenged campaign (Foster, Tr. 834-835).

52. Mr. Foster testified that the concept of phosphorous was not advertised by name because of unfavorable publicity concerning phosphates at that time. Nor was avoidance of spark plug fouling used because the concept was too technical for explanation in mass media advertising (Foster, Tr. 873-875).

53. The weight of probative evidence indicates that phosphorous content was not a major consideration in the formulation of the challenged advertising.

54. The parties have stipulated certain technical definitions:

Octane, which is measurable in different ways, is a measure of motor fuel anti-knock quality, regardless of the method of measurement. The anti-knock quality is one of many measurable properties of a gasoline (CX 283).

An octane number or octane rating of a gasoline is a measure of the anti-knock quality of a gasoline or its ability to resist knock during combustion in an engine and an octane number or octane rating of a gasoline can be measured in different ways (Sun's request for admissions #97, admitted by complaint counsel).

Knock, or as it is sometimes called ping or detonation, is the uncontrolled excessively rapid reaction of a portion or all of the air-fuel mixture in the combustion chamber of the engine (Sun's request for admissions #119, admitted by complaint counsel).

Knock can also result in a loss of engine power (Sawyer, Tr. 639).

55. The sole function of octane is to control knock. "Knock and the possible resultant power loss can be prevented by using any gasoline that has sufficient octane anti-knock quality" (complaint counsel's request for admissions #21, admitted by respondent Sun). "Use of a gasoline with an anti-knock quality exceeding the requirements of a particular engine is nonadvantageous as far as preventing knock is concerned" (complaint counsel's request for admissions #23, admitted by respondent Sun).

56. Paragraph 12(a) of the complaint alleges:

Sunoco's gasoline blends do not provide more engine power by reason of their respective octane levels than do competing gasolines of comparable octane rating.

Respondent Sun admits that Sunoco gasoline blends may not provide more engine power by reason of their respective octane levels, *qua* octane levels, than do competing gasolines of comparable octane rating (Ans. of Respondent Sun Oil).

57. Since octane relates to engine power only by preventing knock, no gasoline, including Sunoco's blends, will consistently provide superior anti-knock resistance under actual driving conditions when compared to a competing gasoline with the same octane number as determined by

Initial Decision

84 F.T.C.

the same test (Caretto, Tr. 620-621; Perrine, Tr. 669; Sawyer, Tr. 640; Samuelsen, Tr. 709-710).

58. Sun did not, during the period of the challenged advertisements, produce regular and premium gasolines with consistently higher octane ratings than the regulars and premiums of other companies (Samuelsen, Tr. 686, 700; CX 243; CX 7, 8, 9 and 11).

59. It follows, therefore, that Sunoco's blends do not consistently provide more engine power by reason of their respective octane levels than do competing gasolines of comparable octane rating.

60. Paragraph 12(b) of the complaint alleges:

Blending Sunoco "260" into Sunoco's lower octane gasolines conveys to resulting blends of Sunoco gasoline no more octane benefits than provided by the octane level of the resultant blends.

Sun admits "although one of the blending agents for Sunoco's 'custom blending' gasolines is Sunoco 260, the resultant blends of Sunoco gasolines do not retain the high octane anti-knock quality of Sunoco 260 but rather possess the octane anti-knock qualities of the resultant blends" (complaint counsel's request for admissions #27, admitted by respondent Sun).

61. Paragraph 12(c) of the complaint alleges:

Octane is a measure of motor fuel anti-knock quality and to the extent that octane relates to power and performance any gasoline of sufficient octane will provide maximum power and performance.

Respondent Sun admits "any gasoline of sufficient octane will, by definition of the word 'sufficient', provide the desired anti-knock quality" (Ans. of respondent Sun, par. 12(c)). There may be other factors contributing to the realization of engine power but if octane relates to engine power only by preventing knock any gasoline of sufficient octane will provide maximum power and performance to the extent that octane relates to power and performance.

62. The use of leaded gasolines causes fouling of engine parts including spark plugs which can under certain conditions cause spark-plug misfire and power loss.

63. Phosphorous has a beneficial effect on this problem of power loss. Spark plug fouling may be reduced or delayed with the use of phosphorous (Samuelsen, Tr. 714; Hall, Tr. 909).

64. In the "Train" and "Coliseum" advertisements the gas tanks of the cars were drained and refilled with Sunoco gasolines immediately prior to the showing (CX 195). Any benefits resulting from the use of a phosphorous gasoline are not conveyed immediately (Hall, Tr. 918; Samuelsen, Tr. 714). It follows, therefore, that any power benefits

derived from the use of Sunoco gasolines that were demonstrated by these ads could not have resulted immediately from switching to the use of the Sunoco gasolines containing the phosphorous additive.

65. At the time the challenged advertising campaign was run Sunoco gasolines were unusual in that typically the *majority* of gasolines in the marketplace did not have as high a phosphorous content (Samuelsen, Tr. 702). There were, however, several brands of gasoline with as high or higher phosphorous content and there may have been even more inasmuch as the research did not attempt to ascertain the phosphorous content of *all* brands of gasoline in the marketplace (CX 218, 219, 223, 225, 226). Moreover, in at least one market area, Toledo, Sun's director of applied research testified that "this unusual posture did not persist." (Kennedy, Tr. 1033).

Finally, respondent's comparisons of phosphorous content make no reference to low lead or unleaded gasolines (Dugan, Tr. 1048).

66. Respondents generally assert that a gasoline containing more theories of phosphorous will be more effective than containing fewer theories. There is testimony that approximately .2 theory at the premium level and .1 theory at the regular level will make a measurable difference in fouling protection (Bettoney, Tr. 960). Respondents offered no scientific studies which directly tested Sunoco gasoline against competitors containing some phosphorous. Moreover, there was some doubt that slight differences of 10 to 15 percent in theory content would make any difference. An official of the Ethyl Corporation testified that "there are so many variables in engine testing that I might have to run a half dozen comparisons and I am not even sure I could find it then, the difference between .15 and .17, because it is so small" (Hall, Tr. 926). An official of the Dupont Company testified that the phosphorous content tests in general are accurate in terms of correlating the number of theories of phosphorous to the spark plug fouling benefits only to the level of about plus or minus 10 to 15 percent (Bettoney, Tr. 960).

67. There are a number of situations in which the presence of phosphorous in gasoline makes little or no difference in power output. A car with new spark plugs and, therefore, no lead deposits has no use for a phosphorous gasoline since there is no lead for the phosphorous to counteract. If such a car continues to run on unleaded gasoline the presence of phosphorous will not enhance its power (Hall, Tr. 915). If spark plug fouling is so advanced that the plugs are not firing at all the phosphorous will be of no benefit (Hall, Tr. 919). Finally, the need for a phosphorous gasoline would be lessened if the driver of the car put the car through a number of hard accelerations to fairly high speeds which

would modify the lead deposits and possibly alleviate the problem (Hall, Tr. 912-913).

68. Respondent Esty participated in the creation of the advertisements in question (see Esty brief p. 9). There were series of meetings concerning this advertising between officials of Esty and officials of Sun and formal presentations of the advertisements were made by Esty to Sun management (Foster, Tr. 840).

69. Correspondence from Esty to Sun indicates Esty's familiarity with research showing that among adult men octane is considered to be a measure of quality, that Sunoco has the highest octane gasoline on the market, that some users associate Sunoco's highest octane with more power and that many users were confused or ignorant about the concept of octane (CX 30, 31, 110, 123 and 124). See Findings 47-49.

70. There is nothing in the record of this proceeding to indicate that Esty relied on any material from Sun or any other source on which to base the claims made in the challenged advertisements.

71. Survey evidence in the record of this proceeding establishes that a substantial number of consumers were aware of an believed claims that Sunoco 260 is the world's highest octane gasoline and that getting 260 in each grade helps improve car performance. A 1970 study reported that 50 percent of all survey respondents were aware of the "highest octane" claim and that 48 percent of them believed that claim. 65 percent of the steady users surveyed knew of the "highest octane" claim and 73 percent of them believed it. 39 percent of all respondents knew of the "260 in each grade" claim and believed it, but among steady users, 52 percent knew of that claim and 65 percent believed it (CX 146). A 1971 study reports that 40 percent of all survey respondents knew of the "highest octane" claim and 47 percent of them believed it. In the same study 60% of the respondents who were steady users knew of the "highest octane" claim and 67% of them believed it. Similarly, 39 percent of all respondents knew of the "260 in each grade" claim and 39 percent of them believed it, while 53 percent of the steady users knew of that claim and 64 percent of them believed it (CX 145).

72. Dr. Frank M. Bass, a professor at Purdue University and an authority in the field of marketing research, testified that the belief levels stated above were very high and that such levels were derived from the advertising as opposed from other sources, although the strength of the beliefs was not measured (Bass, Tr. 506, 507, 508 and 538).

73. Dr. Bass further testified that there is a positive association in the minds of consumers between automobile performance in general and octane. Consumers believe that the higher the octane level in gasoline

the better their automobiles will perform. They also associate specific kinds of auto performance such as good mileage and power with high levels of octane (Bass, Tr. 529, 532; CX 157).

74. The 1971 study referred to above (CX 145, establishes that 70 percent of all respondents stated that the higher the octane the better the car performs (CX 145 p. 28). A special analysis in that same study showed that motorists who were aware of the "highest octane" claim gave a significantly higher rating than other motorists on "good for your engine," "good mileage" and "provides plenty of power" (CX 145 p. 26).

75. A 1972 study notes that "according to the ratings, Sunoco's image is not clearly distinguishable from the competitive average on any of these 3 characteristics": "good mileage," "quick starting," and "cleans your engine." The study goes on to state "our image is most clearly distinguishable from competition on 2 factors * * * "high octane" and "provides plenty of power." All three user types clearly rate Sunoco above competitive average on both of these attributes (RS 7 p. 16). Motorists, even Sunoco users, do not, however, rank these two attributes very important. Among motorists who were aware of the "highest octane" claim Sunoco was rated higher than among other motorists on the characteristics of good mileage, quick starts, powerful gasoline and high octane (RS 7 p. 25).

76. Respondents do not dispute that higher octane will not provide superior performance (see respondent Sun's Appendix p. 29, submitted with its reply brief).

77. Beliefs concerning the superior performance benefits provided by the octane in Sunoco gasoline are enduring in the minds of consumers and will continue to endure in the future for some time after the ads cease. The ads ceased 2-1/2 years ago (Bass, Tr. 512). If advertising the "highest octane" claim were stopped there would be a tendency for awareness level, belief levels particularly, to decay (Bass, Tr. 511).

78. A Gallup survey was conducted in Oct. and Nov. of 1973, almost 2 years after the challenged advertising had ceased, among 2,149 licensed drivers in the Sun Oil Company marketing area, the findings of which are projectable to the entire universe sampled, *i.e.*, all licensed drivers in the Sun marketing area (RS 32; Wood, Tr. 1111-1119).

80. The Gallup survey shows that while 34 percent of all motorists think "some" brands of gasoline have higher octane than others, 66 percent of them either think all brands are the same or don't know. Even among the 34 percent who discerned a difference 13 percent (or about 40 percent of the 34 percent) were unable to rate Sunoco.

81. In the Gallup survey the total rating given each brand was divided by the total number of respondents able to rate that brand,

resulting in a "mean average rating." The mean average rating on the octane rating scale for Sunoco among all motorists was higher than each of the other 6 competitive brands. It was not significantly higher, statistically, than the ratings for American and Shell (Wood, Tr. 1167). When the mean average ratings by those who used the brands in the past several months and those who used the brand most frequently are compared, they "follow the same patterns as you find among all motorists" (Wood, Tr. 1167).

82. On preventing knock, 34 percent of all motorists thought "some" brands better but 66 percent thought them the same or didn't know. A similar pattern existed among Sunoco users, with only about 40 percent of them thinking some brands better preventing knock. Users of other brands showed approximately the same attitudes as Sunoco users (RS 32 p. 3).

83. On power or pick up, 32 percent of all motorists thought some brands better but 68 percent thought them the same or didn't know. Of those discerning a difference, 12 percent (or more than one-third of the 32 percent) were unable to rate Sunoco and 7 percent gave Sunoco a high rating. 9 percent to 12 percent were unable to rate the other 6 brands named and 5 percent to 9 percent gave high ratings to such brands. I find no significant difference in attitudes re power between Sunoco and the 6 other brands (RS 32 p. 27).

84. Even among the 32 percent who thought a particular brand to have better power than other brands, only 11 percent or only 3 percent of all motorists gave octane rating as the reason (RS 32 p. 29).

85. The Gallup survey, however, shows that only 10 percent of the surveyed respondents chose a particular station because of the quality of the brand sold, compared to 86 percent who chose because of location, price or service (RS 32 p. 13). Similarly only 10 percent of motorists consider octane rating important compared to 41 percent for price, 21 percent for mileage and 20 percent for performance (RS 32 p. 9). Even among recent past users of Sunoco 40 percent rate price important, 19 percent mileage, 18 percent performance and 18 percent octane rating. Among most frequent users of Sunoco, 25 percent rate price important, 21 percent mileage, 24 percent performance and only 14 percent think octane rating important. Among the frequent users of the 6 other brands between 7 percent and 12 percent think octane rating important (RS 32 pp. 11-12).

86. Conditions affecting the marketing of gasoline in the Sunoco marketing area have changed in a number of respects from the period of the advertising in question to the present. In the earlier period gasoline was in liberal supply but now gasoline is in short supply. The

price of gasoline has risen very noticeably at the retail level. Automobile engines have been charged from high compression with stress on performance to lower compression engines using lower octane fuel. Unlike the practice during the earlier period gasoline pumps now show the octane number of the gasoline being dispensed. As a result of these changes Sun's advertising practices have changed and diminished and it is not utilizing any gasoline related promotions (Burtis, Tr. 1091-1099).

COMMENT

The principal issues in this proceeding are: (1) Were certain representations made in the challenged advertistments? (2) Did these representations have a tendency or capacity to deceive? (3) If so, should both respondents be held liable? (4) What is the appropriate order and, particularly, is corrective advertising appropriate?

The complaint charges that the challenged advertisements made certain representations (See Finding 17). The ads themselves which were disseminated between 1969 and Jan. 1972 are set forth in Findings 9 through 16. Typical excerpts from these ads are set forth in Finding 19; Finding 20 contains a detailed description of two television ads. It is true, as respondents contend, that in none of the ads are the representations alleged in the complaint made expressly. This, however, does not end the inquiry for it is not only what is said that should be considered but what that is reasonably implied. As Judge Kaufman of the Second Circuit in *FTC v. Sterling Drug Co.* held:

* * * since the purpose of the statute is not to punish the wrongdoer but to protect the public, the cardinal factor is the probable effect which the advertiser's handiwork will have upon the eye and mind of the reader. It is therefore necessary in these cases to consider the advertisement in its entirety and not to engage in disputationous dissection. The entire mosaic should be viewed rather than each tile separately "the buying public does not ordinarily carefully study or weigh each word in an advertisement. The ultimate impression upon the mind of the reader arises from the sum total of not only what is said but also of all that is reasonably implied" (317 F. 2d 669, 674).

See also *Carter Products, Inc. v. Federal Trade Commission*, 323 F. 2d 513, 528, where Judge Wisdom of the Fifth Circuit said:

The Commission need not confine itself to the literal meaning of the words used but may look to the overall impact of the entire commercial.

In this connection I note respondents' observation that Paragraph 13 of the complaint speaks of Sunoco's "unique qualities not found in other brands of gasoline." Sun states that it "does not claim to have unique qualities in its gasolines" and that "Complaint counsel have admitted that only in reference to Sunoco 260 and the middle premiums is the

word unique used in advertisements." (Sun's Appendix #95). The issue seems to be the difference in meaning attributable to the word "unique" compared to the word "unusual." This may be of interest to lawyers and semanticists, but hardly to vast numbers of the general public. We are here concerned with the meanings communicated by these ads not merely to lawyers and semanticists but to the general buying public.

I considered the ads and particularly the two television ads referred to above. I have concluded in Finding 24 that the ads convey the impression that Sunoco's blended grades of gasoline consisting partly of Sunoco 260, "the world's highest octane available," are uniquely able to create octane benefits, including power, in an automobile engine; that they are more powerful than competitive gasolines; and that, therefore, they alone provide the automobiles with power necessary to perform the seemingly difficult, if not impossible, tasks. Although I can rely on my own cumulative knowledge and experience to make these conclusions (*FTC v. Colgate-Palmolive Co.* 380 U.S. 374, 391-92; *Carter Products, Inc. v. FTC*, *supra*) there is record evidence in this proceeding which, in my opinion, supports the conclusions I have reached.

Findings 25 through 30 refer to a test of consumer perception conducted by the Russell Marketing Research. In this study a group of 300 viewers saw the "Train" television commercial and then were asked several open-end questions such as "What do you remember?" The viewers' reactions are set forth in Finding 27 and demonstrate clearly their perception of a claim that Sunoco gasolines with 260 in them give more power and that Sunoco is the only gas with such high octane; that Sunoco makes all its gas with high octane; that all Sunoco gasolines have higher octane meaning extra power; that only Sunoco can give such power. Even an official of respondent Esty told Sun that the study showed improvement in the attitudes of these viewers toward Sunoco's power, performance and quality after viewing that advertisement (Finding 29). It is significant that the respondents offered no independent survey test of perception, consumer testimony or opinion testimony to rebut the findings of the Russell Marketing Research.

The record also has the testimony of Dr. Preston. This advertising authority reviewed the "Train" and "Coliseum" commercials and, in his opinion, viewers would expect that Sunoco gasolines would contain the octane level of 260 and that the demonstrations could be performed only with such gasolines. Dr. Preston, in addition to giving his opinion of the commercials, conducted a small survey testing the reaction of 303 students to these ads. After viewing the commercials they were then asked what the advertiser "appears to be telling you." Their answers are set forth in Finding 37. Fully 79 percent of them said that gasolines

blended with the Action of Sunoco 260 are unusual because they provide more power than you would get with other gasolines. 67 percent said that having 260 Action means you have the highest octane gasoline available at any station anywhere.

Although neither the Russell survey or the Preston survey were numerically projectable, they tend to indicate the general public's reaction and tend to confirm rather than dispute the conclusions I have reached concerning the representations. Compare *Elliot Knitwear Inc.*, 59 F.T.C. 893, where a survey of 60 students was conducted under the auspices of a university professor who had conducted other consumer surveys. There the issue was the labelling of a sweater "cashmora" when, in fact, it contained no cashmere. When asked what they thought of the sweater, only 12 percent referred to the sweater as containing cashmere. When asked what material it was made from, only 22 percent said they thought it was made of cashmere. 70 percent of this small group referred to the label as the source of their information, making a total of only 13 percent of the students surveyed. The Commission held the cashmere survey reliable and establishing that the labels are deceptive. *A fortiori* the Russell survey and the Preston survey must be deemed reliable and establishing the representations of the challenged ads. In the case of the Preston survey which was conducted among university students it is likely that with the general public the percentages of belief would be even higher than with the students who might have less confusion with semantics as was held in *Elliot Knitwear*, *supra*. p. 903.

Dr. Bauer, an advertising authority called by the respondents, did not criticize the opinion of Dr. Preston but did criticize his survey in that the subjects were forced to decide whether a statement was accurate or inaccurate with no middle ground; that the study was conducted in a controlled situation immediately after the subjects gave prime attention to the advertisement; that the subjects were not asked open-ended questions such as "what do you recall?" It may be assumed that the survey could have been improved upon. This, however, does not destroy the value of the survey entirely. Indeed, one of Dr. Bauer's chief objections to the survey was based on his attempt to link the survey with earlier surveys conducted by Dr. Preston in which Dr. Preston found that the subjects couldn't readily distinguish between logically valid propositions and logically invalid propositions. I found, however, that comparisons between Dr. Preston's survey and his earlier works are not necessarily appropriate because of differences in circumstances surrounding the tests (See Finding 43).

Sun argues that the challenged ads were not intended by respondents to make the representations alleged in the complaint. But lack of intent to deceive is irrelevant. *National Dynamics Corp.*, FTC Docket No. 8803 p. 9 [82 F.T.C. 488]. On the other hand, however, the intent of the advertiser should be helpful in determining whether the impressions gained from the ads were reasonably foreseeable. In ascertaining intent, respondents refer to several internal communications between Sun's advertising department and its research department which mentioned the power effect of Sun's phosphorous additive. Communications between Esty and Sun, however, make no such reference. Instead, emphasis is placed upon the action of the highest octane gasoline and high performance. In one such communication Esty reported "the results of this study tend to confirm our belief that a performance strategy based on 260 'world's highest octane' claim is meaningful and believable to consumers." (See Findings 46 through 52). Consequently, I have found that the weight of evidence indicates that phosphorous content was not a major consideration in the formulation of the challenged advertising (Finding 53).

Considerable testimony was received concerning the phosphorous additives. Although Sunoco gasolines were unusual in that their phosphorous content was higher than a majority of other gasolines, there were some other brands that had as high or even higher phosphorous content. No tests were offered by the respondents to show Sunoco's superiority against competitors containing *some* phosphorous but only that Sunoco contained more phosphorous. In many cases the difference was slight and perhaps insignificant. Moreover, the presence of phosphorous in Sunoco gasolines was not suggested or intimated in the advertisements.

In short, I conclude that the presence of phosphorous in Sunoco gasolines is immaterial to this proceeding which is based upon ads representing that certain results were achieved or were achievable because of Sunoco's use of 260 "the world's highest octane gasoline." Even if I were to assume that the phosphorous additive in Sunoco gasolines was the reason for the ads' reference to power, I cannot conclude that such representation was accurate. Some gasolines had a phosphorous content as high as or higher than Sunoco blends (See Finding 65). Moreover, in many instances the presence of phosphorous in gasoline makes little or no difference in power (See Finding 67).

In sum, we are left with the representation that Sunoco gasolines are unusual (and in the case of Sunoco's middle premiums and 260 are unique) in that they alone can provide high performance by reason of

the presence of "the world's highest octane gasoline." As a matter of fact, however, the octane ratings pertain only to the anti-knock qualities of the gasoline and Sunoco gasolines of a given octane rating contain no more anti-knock capacity than competitors of a similar octane rating. The element of power is not an attribute of the octane rating except insofar as knock is prevented. In this respect, however, Sunoco's regular gasolines when compared to competitive brands of regular gasolines and Sunoco's premium when compared to competitive brands of premium are no better or no worse and often the same in octane ratings (See Findings 57-58). Accordingly, Sunoco's anti-knock performance would not differ from its competitors and, absent anti-knock differences, octane rating cannot involve power. The challenged advertisements in implying that the high octane rating contributed to, if not made possible, the seemingly extraordinary power performance of the automobiles' engines and in this respect Sunoco gasolines were unusual, were therefore deceptive and misleading.

The responsibility of an advertising agency has been spelled out in several decisions of the Commission and courts. In *Carter Products, Inc. v. FTC*, *supra*, the extent to which the advertising agency actually participates in the deception is the proper criterion. In *Colgate-Palmolive, Co. v. FTC*, 310 F.2d 89, the Commission was upheld in holding the agency liable where the agency was an active, if not the prime, mover. Indeed, an agency might be able to detect misconceptions in advertising more so than the principal.

The agency, more so than its principal, should have known whether advertisements had the capacity to mislead or deceive the public. This is an area in which the agency has expertise. Its responsibility for creating deceptive advertising cannot be shifted to the principal who is liable in any event. *Merck & Co.* 69 F.T.C. 526, 559.

The decision in the *ITT Continental case*, FTC Docket No. 8860 [83 F.T.C. 865], is pertinent here:

It is not necessary to establish that the agency knew or had reason to know that the specific representations found to exist here were being made in the challenged advertisements. Clearly, it is the advertising agency which is the expert in determining what representations are made in a given advertisement. [Footnote omitted] Indeed this is the very role which it is called on to perform for its client * * *

An agency is clearly liable for the advertising it has created, produced, or assisted in producing unless it can be shown that it did not know or could not know that the challenged advertising was false [Footnote omitted] * * * It was Bates [the advertising agency] which developed the good nutrition theme which was the cornerstone of respondents' advertising campaign for Wonder Bread and which was the source of the deception which we found in this advertising campaign. Bates had a clear duty to assemble all of the facts bearing on the nutritional value of these products if it intended to use this product attribute as its central selling message, its unique selling proposition as it termed it. * * *

Initial Decision

84 F.T.C.

Unless advertising agencies were under a duty to make independent checks of information relied upon to frame their advertising claims, the law would be placing a premium on ignorance. *In re Dolcin* 247 F.2d 524, 534 (D.C. Cir. 1956), *cert. denied*, 353 U.S. 988 (1957). * * * The agency must assume full responsibility for the claims which it makes about a product. If it is unable to do so, it should not make the claims. If it can only do so to some limited degree, it must frame its claims accordingly * * * Bates selected the central selling messages. It had a clear duty in these circumstances to be certain that these advertisements did not have a capacity to deceive.

I have found that respondent Esty participated in the creation of the advertisements in question and held series of meetings with officials of Sun concerning this advertising. It also made formal presentations of the advertisements to the Sun management and conducted research showing that octane is considered to be a measure of quality, that Sunoco has the highest octane gasoline on the market, that some users associate Sunoco's highest octane with more power and that many users were confused or ignorant about the concept of octane. It was Esty who reported its belief that a performance strategy based on 260 "world's highest octane" claim is meaningful and believable to consumers and who urged placing greater emphasis on the performance value individual blends derived from 260 (See Findings 47 through 49 and 68 through 70). It is incontrovertible that Esty participated in the development of the challenged advertisements and that it clearly knew or should have known that these representations were false.

CONCLUSIONS OF LAW

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondents Sun Oil Company of Pennsylvania, a corporation and William Esty Company, Inc., a corporation.
2. Said respondents have been at times relevant herein engaged in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.
3. Respondents have engaged in unfair methods of competition in commerce and have committed unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

THE REMEDY

The law is well-established that the Commission not only is empowered but also bound to enter an order of sufficient breadth to ensure that a respondent will not engage in future violations of the law. *e.g.* *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 611-613 (1946); *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470, 473

(1952); *Federal Trade Commission v. National Lead Co.*, 352 U.S. 419, 428-430 (1957); *Federal Trade Commission v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965). The only constraints which the courts have set down upon the Commission's powers in this area are that the order must bear a reasonable relationship to the unlawful practices found to exist and must be clear and precise so that it is easily understood by the party under its authority. *Siegel, supra*, 327 U.S. at 611-613; *Ruberoid, supra*, 343 U.S. at 473; *National Lead, supra*, 352 U.S. at 428-430; *Colgate, supra*, 380 U.S. at 392, 394-395; *Federal Trade Commission v. Cement Institute*, 333 U.S. 683, 726 (1948).

Within this framework, the Commission has wide discretion in shaping order provisions. It is clear that the parameters of an order are not dictated by the specific violations which have occurred, but rather the Commission may "close all roads," fencing in respondents so that its orders cannot be circumvented easily. *Ruberoid, supra*, 343 U.S. at 473; *National Lead, supra*, 352 U.S. at 429; *Colgate, supra*, 380 U.S. at 394-395. The courts have consistently upheld orders which enjoin "like and related" practices in addition to the specific legal practices alleged in the complaint. *Federal Trade Commission v. Mandel Bros., Inc.*, 359 U.S. 385, 393 (1959); *Niresk Industries v. Federal Trade Commission*, 278 F.2d 337, 343 (7th Cir.) *cert. denied*, 364 U.S. 883 (1960).

Respondent Sun takes exception to complaint counsel's proposed order Paragraph I-D wherein respondent Sun is ordered to cease and desist from

Advertising any such product by presenting evidence including tests, products or demonstrations or the results thereof, or any other evidence that appears or purports to be proof of any fact or product feature that is material in inducing the sale of the product, but which is not evidence which actually proves such fact or product feature.

Complaint counsel cites the decision of the Commission in *Colgate, supra*, as support for this provision but, as counsel for respondent Sun points out, the provision in the order pertaining to Colgate was not identical with the provision now proposed. Accordingly, the provision will be modified to conform with that prescribed in the Colgate case.

Respondent Sun also objects to Paragraph I-E which reads:

Misrepresenting, in any manner, the performance characteristic of Sunoco gasoline or any other gasoline.

Sun contends that it could be:

Faced with a situation in which a claim made for Sunoco gasoline could be absolutely true and contain no expressed comparison or

assertions of uniqueness and yet a Preston survey would show that such claims had been made by implication.

The difficulty with Sun's contention is that Sun did misrepresent Sunoco's performance characteristics. Consequently, we must guard against any such future deception.

Respondent Sun also contests complaint counsel's proposed order at Paragraph I-F which reads:

Representing, directly or by implication that any such product is unique among competing products, when such is in fact not the case.

Here as in the case of Paragraph I-E the record supports the conclusion that Sun did represent its Sunoco gas to be unique among competing products when such was in fact not the case. I conclude, therefore, that complaint counsel's proposed order Paragraph I with a modification in Subparagraph D is appropriate here as respects respondent Sun.

The proposed order would prohibit the specified misrepresentations with regard to "gasoline or any other product in commerce." In effect, however, only Paragraphs D (concerning demonstrations) and F (concerning uniqueness) apply to all products, since Paragraphs A, B, and C are by their terms limited to Sunoco gasoline and Paragraph E is limited to gasoline generally. Complaint counsel argues that the coverage to all products in these Paragraphs is justified in view of the large number of false and deceptive commercials which ran for portions of 4 years. Since Sun primarily markets only petroleum and automotive products there would appear to be little reason not to extend the order coverage to all Sun's products. In the case of respondent Esty, however, the all product coverage would likely encompass many products totally unlike gasoline and its promotion. In view of Esty's active participation in the deception found here, it becomes necessary to guard against any future deception on the part of Esty as well as Sun involving demonstrations and claims of uniqueness whether or not related to gasoline.

Here as in the *Colgate* case, respondents used a number of different commercials employing the same deceptive practice, *i.e.*, implying that because all Sunoco blended gasolines contain Sunoco 260, the world's highest octane, only Sunoco gasolines could do the seemingly difficult, if not impossible, feats of performance. This, as the Supreme Court held in *Colgate*, gives "the Commission a sufficient basis for believing the respondents would be inclined to use similar commercials with respect to the other products they advertise" p. 395. I find it necessary, therefore, to prohibit misleading demonstrations and false uniqueness claims regardless of the products involved.

Paragraph II of the proposed order would prohibit respondent Sun Oil Company from advertising Sunoco gasoline for a period of one (1)

year unless certain of the advertising contained a corrective message. Specifically, the company would be required to make a clear and conspicuous disclosure that, contrary to prior representations found in Sunoco advertising,

To the extent that automobile performance depends on octane levels, automobiles do not perform better with Sunoco than with other gasolines of equal octane.

The said disclosure would have to consist of at least 25 percent of the space used in each print advertisement and not less than 25 percent of the time devoted to each radio and television commercial.

The position of the Commission with respect to corrective advertising is unmistakable. In *Firestone Tire and Rubber Co.*, 81 F.T.C. 398, 471, the Commission held that:

An order requiring corrective advertising is well within the arsenal of relief provisions which the Commission may draw upon in fashioning effective remedial measures to bring about a termination of the acts or practices found to have been unfair or deceptive. If such relief is warranted to prevent continuing injury to the public, it is neither punitive nor retrospective.

Corrective advertising orders where necessary and appropriate will violate neither the letter nor the spirit of the First Amendment guarantees of free speech and press and are clearly within the remedial authority of the Commission.

See also *ITT Continental Baking Co. Inc.*, F.T.C. Docket 8860 [83 F.T.C. 865], decision of the Commission at Slip Opinion page 31.

A more difficult question is presented in the appropriateness of a corrective advertising order in this proceeding. Inasmuch as corrective advertising is warranted to prevent continuing injury to the public it becomes necessary to determine whether the deception practiced by the respondents continues to injure the public. As Federal Trade Commission Chairman Kirkpatrick stated in the *Firestone* case, in which corrective advertising was *not* ordered:

No showing was made that the particular advertisements challenged by the complaint in this matter were in fact commercials which succeeded in achieving the effect desired by advertisers—i.e., to continue to influence consumers' purchasing decisions long after the advertisements had been perceived by consumers * * * For the present, however, it is my view that our knowledge in this area is not deep enough to justify such an approach.

See also *ITT Continental Baking Co. Inc.*, *supra*, in which the Commission held:

We have further evidence that many months after conclusion of the advertising campaign a small percentage of consumers recall the nutritional advertising of respondents though it is not clear from this evidence to what extent those consumers continued to believe that Wonder Bread is an extraordinary food (the misrepresentation found to have been made) * * * we cannot find in the record a sufficient basis upon which to conclude that corrective advertising is needed to eliminate the misrepresentation found.

Here we know that the deceptive advertising was disseminated from 1969 until Jan. 1972. Expert opinion, substantiated as well by surveys, have found that during those years the public was led to believe the representations of these ads. Approximately 2-1/2 years have elapsed since the ads ceased. Dr. Bass, an expert called by complaint counsel, stated that the erroneous beliefs of the public would continue to endure in the future for some time after the ads ceased. At the same time, however, he stated that there would be a tendency for awareness level, and belief levels particularly, to decay.

Complaint counsel relies on the findings of the Gallup survey in 1973 to demonstrate the need for corrective advertising. Respondents rely upon the same survey to demonstrate the inappropriateness of corrective advertising. In the Gallup survey which was conducted in October and November 1973, only 34 percent of the motorists surveyed thought some brands of gasoline had a higher octane rating than others and even among these 34 percent almost half couldn't rate Sunoco. The Gallup survey also showed that motorists thought the octane rating for American and Shell to be at least as high as Sunoco. With respect to power only 32 percent of all motorists thought some brands better than others. 68 percent thought them the same or didn't know. Even among the 32 percent more than 1/3 were unable to rate Sunoco and only about 11 percent of the 32 percent (or 3 percent of all motorists) gave octane rating as their reason for a particular brand to have better power than others.

The Gallup survey also shows that only 10 percent of the motorists chose a particular station because of the quality of the brand sold. A similar percentage consider octane rating important.

Finally, one cannot overlook the change in the conditions affecting the marketing of gasoline since Jan. 1972. The supply of gasoline has become limited and its price has risen very noticeably at retail. Automobile engines have been changed and practically all models now use lower octane fuel. Power is no longer the theme of gasoline promotions. Indeed, greater use of any particular brand of gasoline is no longer being urged in view of the short supply.

It appears that as long ago as Nov. 1973 the beliefs of motorists with respect to the association of power with octane levels had diminished and few considered octane levels as important.

Moreover, this low level of residual injury which consumers retained may not have resulted from Sun's advertising, but from misconceptions gained from other sources or experiences. The record does not support the conclusion that the residual injury, if any, at this time and henceforth, is attributable to respondents' advertising practices of 1969-1972.

In any event, with the change in marketing conditions in the sale of gasoline, it is not likely that power and high octane ratings will be advertised in the near future. Nevertheless, should the gasoline situation change sometime in the future, as many hope it will, respondents should be prohibited from resurrecting their deceptive claims of power for their gasoline. Therefore, a cease and desist order is necessary. But until the gasoline situation improves, the buying public's belief in the deceptive claims will continue to "decay," as Dr. Bass states, because such advertising has ceased and continues to be non-existent. No corrective advertising is necessary to remedy this fast disappearing belief which is slight even now and certainly insignificant by the time the gasoline situation improves and power once again becomes an important attribute of gasoline to the motorist. I conclude, therefore, that insufficient basis has been established for requiring corrective advertising in this case.

Even were I to find that some corrective advertising would be warranted here, the record does not permit prescribing any details. Complaint counsel seek a one year period of corrective advertising with 25 percent of the space or time employed by the ad devoted to such corrective advertising. Relevant evidence is lacking to furnish a substantial basis from which to infer the fact at issue and due process requires such relevant evidence. There is nothing in the record in this case to indicate that one year of corrective advertising is the appropriate amount rather than 6 months or 5 years or any other period of time. Similarly, there is no evidence in the record of this case to indicate that 25 percent of a given commercial is the appropriate proportion to be devoted to corrective advertising in order to accomplish the desired effect. For all this record shows, 5 percent or 50 percent might be more nearly appropriate. It is not within the expertise of the undersigned to determine the time or amount of corrective advertising needed to correct false impressions which continue to influence the buying public. It may not be within the expertise of the Commission as well. Without such expertise and without such relevant evidence the issuance of an order as suggested by complaint counsel would be clearly improper, even if some corrective advertising were found necessary. A corrective advertising order which had a longer duration or a greater proportion of space or time than necessary to remedy the consumers' residual injury which continued after the misleading ads had ceased would be punitive and improper. It is not sufficient, therefore, to order "some" corrective advertising. The conditions, amount and duration of such corrective advertising must be prescribed or be subject to guidance from the Federal Trade Commission, but cannot be without relevant evidence on

these subjects. The necessity for relevant evidence may be obviated in time when the Commission acquires more experience and expertise in this field of knowledge. For further elaboration on the subject of corrective advertising see Rosden, *The Law of Advertising* (1973) Chapter 9; *Consumer Research and Corrective Advertising*, Marketing Science Institute (1973); 85 Harvard Law Review pp. 477-506.

ORDER

It is ordered, That respondent Sun Oil Company, a corporation, and respondent William Esty Company, a corporation, either jointly or individually, and their officers, agents, representatives, employees, successors, and assigns, directly or through any corporate device in connection with the advertising, offering for sale, sale, or distribution of gasoline or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Advertising respondent Sun Oil Company's highest octane gasoline, currently designated "Sunoco 260" or any other such product, howsoever designated, in such a manner as to indicate, directly or by implication, that blending said gasoline with any lower octane gasoline results in gasoline blends that provide more engine power than do competing gasolines having octane ratings comparable to respondent Sun Oil Company's blends.

B. Advertising respondent Sun Oil Company's gasolines in such a manner as to indicate directly or by implication that the blending of Sunoco's highest octane gasoline, currently designated "Sunoco 260," or any other such product howsoever designated, with Sunoco's lower octane gasolines conveys to the resulting blends of Sunoco gasoline more octane benefits than provided by octane level of the resultant blends.

C. Advertising respondent Sun Oil Company's "custom blended" gasoline in such a manner as to indicate, directly or by implication, that automobile engines will operate at maximum power and performance only when operated on the octane of said blended gasoline.

D. Advertising any such product by presenting evidence including tests, experiments or demonstrations or the results thereof, or any other evidence of any fact or product feature that is material in inducing the sale of the product which is not evidence which actually proves such fact or product feature.

E. Misrepresenting, in any manner, the performance characteristics of Sunoco gasoline or any other gasoline.

F. Representing, directly or by implication, that any such product is unique among competing products, when such is in fact not the case.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions involved in the advertising, promotion, distribution, or sale of consumer products.

It is further ordered, That each respondent 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 changes in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondents shall, within sixty (60) days and at the end of six (6) months after the effective date of the order served upon them, file with the Commission a report, in writing, signed by respondents, setting forth in detail, the manner and form of its compliance with the order to cease and desist.

FINAL ORDER

No appeal from the initial decision of the administrative law judge having been filed, and the Commission having determined that the case should not be placed on its own docket for review and that pursuant to Section 3.51 of the Commission's Rules of Practice (effective Aug. 15, 1971), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the administrative law judge shall, on the 19th day of Aug. 1974, become the decision of the Commission, with the following slight modifications:

On p. 5, final paragraph, delete second sentence, [p. 255, *reduced* Par. 13, herein.];

On p. 4, line 32, substitute "Rhythm" for "Rythm" [p. 254, para. 13, subparagraph, herein.];

On p. 5, line 1, delete "s" from "advertisements" [p. 256, para. 15, herein.];

On p. 5, line 18, insert "that" before "by" [p. 255, *reduced* Par. 11(a) herein.];

On p. 10, line 12, substitute "of any" for "than any other" [p. 258, para. 27, fifth *reduced* subparagraph, herein].

It is further ordered, That Sun Oil Company, a corporation, and William Esty Company, Inc., a corporation, shall within sixty (60) days and at the end of six (6) months after service of this order upon them,

file with the Commission a report in writing signed by such respon-