

IN THE MATTER OF

MID CITY CHEVROLET, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3014. Complaint, March 17, 1980—Decision, March 17, 1980*

This consent order requires, among other things, a Laurel, Md. motor vehicle dealer and its corporate officer to cease, in connection with the advertising and sale of an automobile retrofit device known as the Power Pak, making false or unsubstantiated fuel economy claims and misrepresenting the purpose, content or conclusion of tests and surveys. Advertisements referring to fuel economy improvement resulting from the installation of an automobile retrofit device must include a disclaimer and at least one fuel economy claim expressed in miles per gallon. Further, respondents are required to send to each consumer who had purchased a Power Pak from them a letter offering a full refund of the purchase and removal of the device at no charge. All refund requests must be honored in a timely manner and relevant records maintained for a period of three years.

Appearances

For the Commission: *Laurence M. Kahn.*

For the respondents: *Lynne Perkins-Brown, Oxon Hill, Md.*

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 Mid City Chevrolet, Inc., a corporation and John Tyler, individually and as an officer of the corporation, hereinafter sometimes 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:

PAR. 1. Respondent Mid City Chevrolet, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Maryland with its office and principal place of business located at 501 Washington Boulevard, Laurel, Maryland.

Respondent John Tyler is president of the corporate respondent named herein. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

PAR. 2. Respondents, in conjunction with their business of selling cars, trucks, and vans, are now, and for some time last past have been, engaged in purchasing, offering for sale, sale, distribution, and advertising of a product known as Power Pak (hereinafter "product"), which product is advertised to be a means of improving fuel economy in automobiles. Said product is an automobile retrofit device, as "automobile retrofit device" is defined in §301 of the Energy Policy and Conservation Act of 1975 15 U.S.C. 2011. Respondents, in connection with their offering for sale of said product, have disseminated, published and distributed and now disseminate, publish and distribute advertisements and promotional material for the purpose of promoting the sale of said product, as well as for the purpose of promoting the sale of respondents' cars, trucks, and vans.

PAR. 3. Respondents maintain, and have maintained, a substantial course of business, including the acts and practices as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their said business, respondents have disseminated and caused the dissemination of certain advertisements for said product by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, the insertion of advertisements in newspapers with national circulations and the transmission of advertisements through radio stations with sufficient power to broadcast across state lines and into the District of Columbia for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said product in commerce.

PAR. 5. Among the advertisements and other sales promotional materials is the material identified as Exhibit A which is attached hereto.

PAR. 6. Through the use of advertisements referred to in Paragraph Five and other advertisements and sales promotional materials, respondents represented and now represent, directly or by implication, that

a. the Power Pak when installed in a typical automobile will significantly improve fuel economy;

b. under normal driving conditions, a typical driver will ordinarily obtain a fuel economy improvement of 25% to 50% when Power Pak is installed in his/her automobile;

c. competent scientific tests prove the fuel economy claims made for Power Pak.

PAR. 7. At the time respondents made the representations alleged in

Paragraph Six of the complaint, they did not possess and rely upon a reasonable basis for such representations. Therefore, said advertisements are deceptive, misleading, or unfair.

PAR. 8. In truth and in fact, contrary to respondents' representations in Paragraph Six:

a. Power Pak when installed in a typical automobile will not significantly improve fuel economy;

b. under normal driving conditions, a typical driver will not ordinarily obtain a fuel economy improvement of 25% to 50% when Power Pak is installed in his/her automobile;

c. no competent scientific tests prove the fuel economy claims made for Power Pak.

Therefore, said advertisements are deceptive, misleading or unfair.

PAR. 9. Exhibit A and other advertisements represent, directly and by implication, that respondents had a reasonable basis for making, at the time they were made, the representations alleged in Paragraph Six. In truth and in fact, respondents had no reasonable basis for such representations. Therefore, said advertisements are deceptive, misleading, or unfair.

PAR. 10. In the course and conduct of their business, and at all times mentioned herein, respondents have been, and now are, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the sale of automobile retrofit devices and in the sale of cars, trucks, and vans.

PAR. 11. The use by respondents of the aforesaid unfair or deceptive representations and the dissemination of the aforesaid false advertisements has had, and now has, the capacity and tendency to mislead members of the consuming public into the erroneous and mistaken belief that said representations were and are true and into the purchase of substantial quantities of products sold by respondents by reason of said erroneous and mistaken belief.

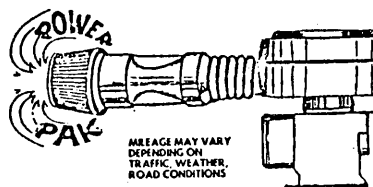
PAR. 12. The aforesaid acts and practices of respondents, as herein alleged, including the dissemination of the aforesaid false advertisements, were and are all to the prejudice and injury of the public and of respondents' competitors, and constituted and now constitute unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act.

AMAZING OFFER—EXCLUSIVELY AT MID-CITY CHEVROLET***INCREASE YOUR GAS MILEAGE UP TO 25%***

(OR MORE PER GALLON)

TESTS HAVE SHOWN FROM 25%—50% INCREASE REALIZED

A recent breakthrough in high energy technology now makes possible a fuel conservation system which utilizes advanced concepts of humidification and increased air flow. Do not confuse this system with water injection, vaporization, or similar metering systems. POWER PAK employs a totally new, patented process, that is a result of dedicated, scientific research. Both POWER PAK users and test organizations alike testify that POWER PAK will add at least 25% to your highway mileage and performance. If you drive larger vehicles or at high RPMs, you can expect even more.



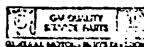
MILEAGE MAY VARY
DEPENDENT ON
TRAFFIC, WEATHER,
ROAD CONDITIONS

EXCLUSIVE AT MID-CITY CHEVROLET

**MID-CITY WILL INSTALL AT NO ADDITIONAL
COST THE AMAZING NEW "POWER-PAK" UNIT
ON ALL 1979 MID-CITY CHEVROLET CARS, TRUCKS & VANS**

WHAT POWER PAK MEANS TO YOUR VEHICLE:

- **IMPROVED GAS MILEAGE**
up to 100 extra miles per tank (Avg. 20 Gal. Tank)
- **INCREASED HORSEPOWER**
proven under race conditions
- **COOLER ENGINE OPERATION**
super humidified air does it
- **LESS EMISSIONS**
the result of better combustion
- **CLEANER ENGINE OPERATION**
removes carbon build-up
- **WORKS ON LOWER OCTANE FUEL**
use regular, not super
- **NO PINGING**—avoids costly engine damage.



KEEP THAT GREAT GM FEELING
WITH GENUINE GM PARTS

ADDITIONAL SAVINGS**SAVE UP TO \$2500**

**ON 1979 COMPANY
OFFICIAL DEMONSTRATORS
PLUS—POWER PAK**

- CHEVROLET CARS
- CHEVROLET TRUCKS
- CHEVROLET VANS

CALL FOR APPOINTMENT AND
WE WILL MEET YOU AT YOUR PLACE
OF EMPLOYMENT OR HOME

THE LOW OVERHEAD DEALER IN THE HEART OF LAUREL, MD. JUST MINUTES FROM 495—NORTH ON U.S. 1

MID-CITY

AUTO & TRUCK DISCOUNT CENTER

501 WASHINGTON BOULEVARD, LAUREL, MD.
LOCAL 725-2700 WASH. 953-3033

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in the further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Mid City Chevrolet, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal office and place of business at 501 Washington Boulevard, Laurel, Maryland. Respondent John Tyler is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his principal office and place of business is located at the above-stated address.

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

ORDER

PART I

It is ordered, That respondents Mid City Chevrolet, Inc., a corporation and John Tyler, individually and as an officer of the corporation, their successors and assigns, either jointly or individually, and

respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of the automobile retrofit device known as Power Pak, as "automobile retrofit device" is defined in §301 of the Energy Policy and Conservation Act of 1975, 15 U.S.C. 2011, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that the automobile retrofit device known as Power Pak will or may result in fuel economy improvement when installed in an automobile, truck, recreational vehicle, or other motor vehicle without otherwise adjusting parameters on the vehicle's engine to conditions other than those specified by the vehicle's manufacturer.

PART II

It is further ordered, That respondents, their successors and assigns, either jointly or individually, and respondents' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any automobile retrofit device as "automobile retrofit device" is defined in §301 of the Energy Policy and Conservation Act of 1975, 15 U.S.C. 2011, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- a. representing, directly or by implication, that such device will or may result in fuel economy improvement when installed in an automobile, truck, recreational vehicle, or other motor vehicle unless (1) such representation is true, and (2) at the time of making such representation, respondents possess and rely upon written results of dynamometer testing of such device according to the then current urban and highway driving test cycles established by the Environmental Protection Agency and these results substantiate such representation and (3) where the representation of the fuel economy improvement is expressed in miles per gallon or percentage, all advertising and other sales promotional materials, which contain the representation expressed in such a way, must also contain, in a way that clearly and conspicuously discloses it, the following disclaimer: "REMINDER: Your actual fuel saving may be less. It depends on the kind of driving you do, how you drive and the condition of your car;"
- b. misrepresenting in any manner the purpose, content, or conclusion of any test or survey pertaining to such device;
- c. failing to disclose clearly and conspicuously in any advertisement

or other promotional material that refers or relates in any way to such device the fuel economy improvement, if any, in miles per gallon which may be expected from the installation of such device on motor vehicles.

PART III

1. Respondents, within thirty (30) days of the date on which this order becomes final, shall send a copy of the letter marked Exhibit B via first class mail to each consumer who purchased from them the device known as Power Pak and whom respondents are able to locate from information in their files. Respondents, upon receiving, within one year of the date upon which this order becomes final, either a written or a verbal request for a refund of Power Pak's purchase price from any consumer who purchased Power Pak from them, shall, within one week of the date of such request: 1) refund the full purchase price of Power Pak, including any installation charges and taxes, and 2) remove Power Pak from the consumer's vehicle at no charge to the consumer, and 3) at no charge to the consumer, make any adjustments to the vehicle's engine which are made necessary by Power Pak's removal. The envelopes in which Exhibit B is enclosed shall contain no restrictions against forwarding and shall be plain white envelopes with no marking other than Mid City Chevrolet's name and return address and the name and address of the consumer purchaser.

2. Respondents shall supply, as part of their initial compliance report, noted in Part VIII below, a list consisting of the name and address of each and every person whom respondents were able to locate from information in their files, and a list consisting of the name and address of each and every person to whom Exhibit B was sent. Respondents shall supply as part of their supplemental compliance report, noted in Part VIII below, a list consisting of the name and address of each and every person requesting a refund and the date of that person's request, and a list consisting of the name and address of each and every person to whom refund was made, the dollar amount of that person's refund, and the date upon which that person received the refund. Each such list shall contain the names of individuals in alphabetical order.

PART IV

It is further ordered, That respondents, their successors and assigns, either jointly or individually, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any automobile retrofit device,

as "automobile retrofit device" is defined in §301 of the Energy Policy and Conservation Act of 1975, 15 U.S.C. 2011, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain the following accurate records which may be inspected by Commission staff members upon fifteen (15) days' notice: copies of and dissemination schedules for all advertisements, sales promotional materials, and post-purchase materials; records of the number of pieces of direct mail advertising sent in each direct mail advertisement dissemination; documents which substantiate or tend to substantiate or which contradict or tend to contradict any claim, made directly or by implication, concerning such device, which is a part of the advertising, sales promotional material, or post-purchase materials disseminated by respondents directly or through any business entity; documents indicating the names and addresses of all persons requesting refunds; documents indicating the names and addresses of all persons receiving refunds; documents indicating, for each person receiving a refund, the amount that person received. Such records shall be retained by respondents for a period of three (3) years from the last date any such advertising, sales promotional, or post-purchase materials were disseminated.

PART V

It is further ordered, That the corporate respondent shall forthwith distribute a copy of this order to each of its operating divisions, to its successors and assigns, and to each of its officers, agents, representatives, or employees who are engaged in the preparation and placement of advertisements, and that the individual respondent shall forthwith distribute a copy of this order to each of his agents, representatives, employees, successors and assigns.

PART VI

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

PART VII

It is further ordered, That the individual respondent named herein

Decision and Order

promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five years from the effective date of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's position in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

PART VIII

It is further ordered, That the respondents shall within sixty (60) days after service upon them of this order, and also one (1) year thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which they complied with this order.

EXHIBIT B

(date letter sent by Mid City
inserted here)

Mid City Chevrolet
501 Washington Boulevard
Laurel, Maryland 20810
(301) 725-2700
(202) 953-3883

REFUND OFFER

Dear Customer:

Some time ago you bought a device called Power Pak from us. Our ads claimed your car would use far less gas with it, but we have since become aware that we did not have adequate grounds for making this claim, and Power Pak may well not give you the gas mileage improvement you expected, if any at all. Therefore, if you are not satisfied with the results you have received from Power Pak, we are offering you a full refund of the price you paid. At no charge, we will also remove Power Pak from your car and will perform any adjustments to your engine made necessary by its removal.

Decision and Order

95 F.T.C.

To get the refund, please call or write us or just stop in and ask for a refund. If we can't remove Power Pak right then, we will remove it and refund your money within one week of the date we hear from you. This offer expires (date one year after date order becomes final inserted here) so don't delay.

Sincerely,

Mid City Chevrolet

IN THE MATTER OF
AMERICAN HOME PRODUCTS CORPORATION, ET AL.

Docket 8918. Interlocutory Order, March 18, 1980

ORDER DENYING MOTION TO STAY APPEAL

Respondent American Home Products (AHP) has filed a motion requesting the Commission to stay AHP's appeal pending its consolidation with other cases involving advertising claims for analgesic products,¹ or, in the alternative, to stay consideration of a motion filed by Sterling Drug Inc. in one of the other cases (Dkt. 8919).² For the reasons stated below, AHP's motion for a stay is denied.

One of the grounds asserted by AHP as a basis for its motion is that Commission consideration of Sterling's proposed consent order in Dkt. 8919 would "prejudge" AHP's appeal in this proceeding. AHP contends that this prejudgment would occur because the proposed consent order in Dkt. 8919 contains provisions applicable to Sterling's over-the-counter combination analgesics which are very similar to provisions contained in the order entered by the Administrative Law Judge against AHP in this proceeding. AHP's contention that Commission consideration or disposition of a proposed consent order in another, factually-related proceeding would somehow disqualify the Commission from deciding this appeal is without merit, and AHP has cited no precedent for it. A tribunal which in the context of a prior proceeding has passed on factual issues is not precluded from passing upon identical issues in a subsequent adjudication even when the two proceedings derive from the same set of facts. See, e.g., *Pangburn v. CAB*, 311 F.2d 349, 358 (1st Cir. 1962). Here, by contrast, Commission consideration of a proposed consent order in Docket No. 8919 requires no determination on the facts at issue in that proceeding; in addition, the two proceedings derive from distinct, albeit overlapping, sets of facts. Moreover, if AHP's position were correct, the Commission might be prevented from giving any consideration to the other pending analgesics cases, a result which would frustrate the exercise of the Commission's adjudicative function. Cf. *FTC v. Cement Institute*, 333 U.S. 683, 700-01 (1948).

AHP argues in addition that its appeal should be stayed pending its consolidation with any appeals from *Sterling Drug* and *Bristol-Myers* because of the "risk of unfairness inherent in deciding the pending analgesics cases on a piecemeal basis." This appears to be essentially

¹ *Sterling Drug, Inc.*, Dkt. 8919; *Bristol-Myers Co.*, Dkt. 8917.

² Sterling's motion sought to withdraw from adjudication all issues relating to Sterling's over-the-counter combination internal analgesics and to enter a cease and desist order applicable to these products.