

IN THE MATTER OF
STANDARD OIL COMPANY OF CALIFORNIA, ET AL.

MODIFIED ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8827. Decision, Nov. 26, 1974—Modified Order, Oct. 7, 1980

In compliance with the decision rendered by the Court of Appeals for the Ninth Circuit on July 3, 1978, 577 F.2d 653 (1978), this modified order amends the Commission's cease and desist orders issued against an oil company and its advertising agency on November 26, 1974, 40 FR 13488, 84 F.T.C. 1401, so that they refer only to future advertising of F-310, a gasoline additive product, rather than to "any product."

MODIFIED ORDER TO CEASE AND DESIST

Respondents having filed in the United States Court of Appeals for the Ninth Circuit petitions for review of the Commission's cease and desist order issued herein on November 26, 1974; and the Court having rendered its decision modifying the Commission's order and, as so modified, affirming and enforcing the order; and the time for filing a petition for certiorari having expired and no petition for certiorari having been filed:

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read as follows:

I.

It is ordered, That respondent Standard Oil Company of California, a corporation, its successors and assigns, its officers, representatives, agents, employees, directly or through any corporate or other device, in connection with the advertising of the additive F-310, forthwith cease and desist from:

1. Representing directly or by implication that such product:

- (a) Will produce or result in motor vehicle exhaust which is pollution free or generally pollution free; or
 - (b) Will eliminate or reduce air pollution caused by motor vehicles;
- or
- (c) Will eliminate or reduce emissions from all or any number or group of motor vehicles in which it is used;
- or that:

(d) Such gasoline additive product has any other quality, performance ability or other characteristic; or

(e) Tests, demonstrations, research or experiments have been conducted which prove or substantiate any of said representations;

Unless and only to the extent that each and every such representation is true and has been fully and completely substantiated by competent scientific tests. The results of said tests, the original data collected in the course thereof and a detailed description of how said tests were performed shall be kept available in written form for at least three years following the final use of the representation.

2. Representing directly or by implication that:

(a) Automotive exhaust has certain observable or measurable characteristics in all or any number or group of motor vehicles when such is not the fact; or

(b) Any machines, measuring devices or technical instruments have particular characteristics or capacities when such is not the fact; or

(c) Such product has any effectiveness in reducing air pollution or any air pollutant or air pollutants without at the same time, in the same advertisement or other form of communication, conspicuously disclosing that not all of the harmful pollutants in automotive exhaust are affected by said product; or

(d) Such product will reduce any emissions of pollutants from automobile exhaust by any percentage or numerical quantity unless in connection therewith there is a clear, accurate and conspicuous disclosure of the type of vehicle which can expect to achieve reductions of such magnitude and the approximate percentage of such vehicles in the general car population.

II.

It is ordered, That respondent Standard Oil Company of California, a corporation, its successors and assigns, its officers, representatives, agents, employees, directly or through any corporate or other device, in connection with the advertising of the additive F-310, forthwith cease and desist directly or indirectly from:

1. Advertising by or through the use of or in conjunction with any test, experiment, or demonstration, or the result thereof, or any other information or evidence that appears or purports to confirm or prove, or is offered as confirmation, evidence, or proof of any fact, product characteristic or the truth of any representation, which does

not accurately demonstrate, prove, or confirm such fact, product characteristic, or representation.

2. Using any pictorial or other visual means of communication with or without an accompanying verbal text which directly or by implication creates a misleading impression in the minds of viewers as to the true state of material facts which are the subject of said pictures or other visual means of communication.

3. Misrepresenting in any manner or by any means any characteristic, property, quality, or the result of use of such gasoline additive product.

III.

It is ordered, That respondent Batten, Barton, Durstine & Osborn, Inc., a corporation, its successors and assigns, its officers, representatives, agents, employees, directly or through any corporate or other device, in connection with the advertising of the additive F-310, forthwith cease and desist from:

1. Representing directly or by implication that such product:

(a) Will produce or result in motor vehicle exhaust which is pollution free or generally pollution free; or

(b) Will eliminate or reduce air pollution caused by motor vehicles; or

(c) Will eliminate or reduce emissions from all or any number or group of motor vehicles in which it is used;

or that:

(d) Such gasoline additive product has any other quality, performance ability or other characteristic; or

(e) Tests, demonstrations, research or experiments have been conducted which prove or substantiate any of said representations;

Unless and only to the extent that respondent has a reasonable basis for such representation based upon competent scientific tests. The results of said tests and the data collected in the course thereof relied upon by respondent shall be kept available in written form for at least three years following the final use of the representation.

2. Representing directly or by implication that:

(a) Automotive exhaust has certain observable or measurable characteristics in all or any number or group of motor vehicles when such is not the fact; or

(b) Any machines, measuring devices or technical instruments have particular characteristics or capacities when such is not the fact; or

(c) Such product has any effectiveness in reducing air pollution or any air pollutant or air pollutants without at the same time, in the same advertisement or other form of communication, conspicuously disclosing that not all of the harmful pollutants in automotive exhaust are affected by said product; or

(d) Such product will reduce any emissions of pollutants from automobile exhaust by any percentage or numerical quantity unless in connection therewith there is a clear, accurate and conspicuous disclosure of the type of vehicle which can expect to achieve reductions of such magnitude and the approximate percentage of such vehicles in the general car population.

IV.

It is ordered, That respondent Batten, Barton, Durstine & Osborn, Inc., a corporation, its successors and assigns, its officers, representatives, agents, employees, directly or through any corporate or other device, in connection with the advertising of the additive F-310, forthwith cease and desist directly or indirectly from:

1. Advertising by or through the use of or in conjunction with any test, experiment, or demonstration, or the result thereof, or any other information or evidence that appears or purports to confirm or prove or is offered as confirmation, evidence or proof of any fact, product characteristic, or of the truth of any representation which does not accurately demonstrate, prove, or confirm such fact, product characteristic, or representation unless the respondent can establish it neither knew, nor had reason to know, nor upon reasonable inquiry could have known that such was the case.

2. Using any pictorial or other visual means of communication with or without an accompanying verbal text which directly or by implication creates a misleading impression in the minds of viewers as to the true state of material facts which are the subject of said pictures or other visual means of communication unless the respondent can establish it neither knew nor had reason to know nor upon reasonable inquiry could have known the true facts.

3. Misrepresenting in any manner or by any means any characteristic, property, quality, or the result of the use of such gasoline additive product unless the respondent can establish it neither knew nor had reason to know nor upon reasonable inquiry could have known that such representations are false.

It is further ordered, That respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

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

It is further ordered, That respondents shall, within sixty (60) days after service of this order upon them, file with the Commission a written report, signed by the respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Commissioner Pitofsky did not participate.

Amended Complaint

IN THE MATTER OF

HEUBLEIN, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT
AND SEC. 7 OF THE CLAYTON ACT

Docket 8904. Amended Complaint, Nov. 16, 1976—Order, Oct. 7, 1980*

This order dismisses the Commission's November 16, 1976 amended complaint which alleged that the effect of Heublein, Inc.'s acquisition of a controlling interest in United Vintners, Inc. substantially lessened competition or tended to create a monopoly in the production, distribution and/or sale of wine in the United States. The Commission, in dismissing the complaint, held that the small lessening of actual competition resulting from the merger and the evidence in the record were insufficient to establish a violation of antitrust law.

Appearances

For the Commission: *Nelson M. Ishiyama, Laurence O. Masson and Mary L. Azcuenaga.*

For the respondent: *George J. Caspar, Farmington, Ct.; Richard E. Walton, San Francisco, Ca.; Lloyd W. McCormick, William H. Armstrong and Warren E. George, McCutchen, Doyle, Brown & Enersen, San Francisco, Ca.; J. Wallace Adair, Ralph J. Savarese, John DeQ. Briggs, III and Raymond A. Jacobsen, Jr., Howrey & Simon, Washington, D.C.*

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that Heublein, Inc. (hereinafter "Heublein"), and Heublein Allied Vintners, Inc. (hereinafter "Vintners"), respondents herein, have violated the provisions of Section 7 of the Clayton Act, as amended, (15 U.S.C. 18), and that the above-named respondents, Allied Grape Growers (hereinafter "Allied"), and United Vintners (hereinafter "United"), respondents herein, have further violated the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45), through the acquisition by Heublein of a controlling interest in United, and that a proceeding in respect thereof would be in the public interest, hereby issues this amended complaint (hereinafter "complaint") pursuant to Section 11 of the amended Clayton Act and

* Original Complaint issued Nov. 27, 1972.