

IN THE MATTER OF
RENUZIT HOME PRODUCTS COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3081. Complaint, Jan. 20, 1982—Decision, Jan. 20, 1982

This consent order requires, among other things, a Philadelphia, Pa. manufacturer and distributor of transmission and hydraulic fluids and motor oils to cease making any representations concerning the API Service Classification, SAE Viscosity or any performance or quality characteristic of its motor oils unless the company possesses documentation supporting those representations. Respondent is further prohibited from misrepresenting the purpose, content, or conclusions of any test or survey, and required to furnish all personnel engaged in advertising, quality control or policy-making with a copy of the order.

Appearances

For the Commission: *Michael Dershowitz and Lewis Morris.*

For the respondent: *Pro se.*

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 Renuzit Home Products Co., a corporation, hereinafter sometimes referred to as respondent, has 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. Respondent Renuzit Home Products Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 3rd and Berks Streets, Philadelphia, Pennsylvania.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacturing, offering for sale, sale and distribution of motor oils, transmission fluids, and hydraulic fluids to retailers for sale to the public.

PAR. 3. In the course and conduct of its business, respondent ships its products to wholesale purchasers throughout the Mid-Atlantic region. Respondent prepares promotional and labeling

materials for its product in Philadelphia, Pennsylvania and disseminates these materials throughout the Mid-Atlantic region. Respondent, therefore, maintains 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 its business, and in order to induce the sale of its products to the public, respondent has disseminated labels for use on its motor oils.

Typical and illustrative of the statements and representations included on its labels, but not all-inclusive thereof, are the following:

API Services SE-CC-MS Meets API Specifications as shown on lid.

* * * * *

SAE 10W-20W-30

PAR. 5. At the time respondent made the statements and representations alleged above, it did not possess and rely upon a reasonable basis for such statements and representations. Therefore, said statements and representations were unfair, deceptive, or misleading.

PAR. 6. By and through the use of the aforementioned statements and representations, respondent has represented directly or by implication, that it had a reasonable basis for making, at the time they were made, the statements and representations alleged in Paragraph Four. In truth and in fact, respondent had no reasonable basis for such statements and representations. Therefore, said statements and representations were deceptive, misleading, or unfair.

PAR. 7. In the course and conduct of its business, and at all times mentioned herein, respondent as been, and now is, in substantial competition in or affecting commerce with corporations, firms and individuals engaged in the wholesale sale of motor oils, transmission fluids, and hydraulic fluids.

PAR. 8. The use by respondent of the aforesaid deceptive, misleading, or unfair statements and representations and their dissemination has had the capacity and tendency to mislead members of the public into the erroneous and mistaken belief that said statements and representations were true and complete, and into the purchase of substantial quantities of respondent's motor oils by reason of said erroneous and mistaken belief.

PAR. 9. The acts and practices of respondent, as herein alleged, including the dissemination of deceptive, misleading, or unfair

statements and representations, were all to the prejudice and injury of the public and of respondent's competitors and constituted, and constitute, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

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

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 respondent had 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 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 Renuzit Home Products Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 3rd and Berks Streets, in the City of Philadelphia, State of Pennsylvania.

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

ORDER

PART I

It is ordered, That respondent Renuzit Home Products Co., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of motor oils 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 its motor oils are of any American Petroleum Institute (API) Service Classification; or
- b. representing, directly or by implication, that its motor oils are of any Society of Automotive Engineers (SAE) Viscosity; or
- c. representing, directly or by implication, any other performance or quality characteristics of its motor oils;

unless each representation is true, and unless at the time of making each such representation, respondent possesses and relies upon competent and reliable scientific tests which substantiate each such representation.

For purposes of substantiating representations of the API Service Classification of any motor oil, respondent shall obtain for each such product passing scores on the appropriate engine sequence tests, as described in the then current SAE Technical Report J183, "Engine Oil Performance and Engine Service Classification", or any succeeding document which has the same force and effect as SAE Technical Report J183. In lieu of conducting engine sequence tests on motor oils of its own formulation, respondent may use a motor oil blend formula developed by another manufacturer, if a motor oil blended to that formula has been tested in a competent and reliable manner by the manufacturer that developed the motor oil blend formula or some other reliable testing facility in the manner set out above and has received passing scores, and respondent possesses true and complete documentation to that effect at the time it makes any representation of the API Service Classification of its own product. The initial testing to determine the API Service Classification of a motor oil manufactured according to any formula used by respondent shall be supplemented by respondent through periodic testing of batches, runs or blending tank lots of its motor oils. The samples to be tested shall be selected according to a predetermined protocol

consistent with proper quality control and shall be subjected to tests which indicate the presence and quantity of additives necessary to produce motor oil which conforms to the API Service Classification claimed for respondent's product. Respondent may choose any valid scientific method for the supplemental tests and the sampling protocols as long as the methods and protocols have been approved by the Commission staff.

For purposes of substantiating SAE Viscosity, each motor oil manufactured by respondent shall be tested in accordance with the procedures set out in the then current SAE Technical Report J300d, "Engine Oil Viscosity Classification" or any succeeding document which has the same force and effect as SAE Technical Report J300d, and must receive test scores within the limits described therein.

Each separate batch, run or blending tank lot of motor oil manufactured by respondent shall be tested for SAE Viscosity according to a predetermined protocol consistent with proper quality control and passing scores obtained before respondent makes any representations of the SAE Viscosity of its motor oil products. The sampling protocol to be used must first be approved by the Commission staff.

Attached to this Order and incorporated by reference is a protocol for the supplemental sampling and testing of respondent's motor oils. This protocol has been approved by Commission staff for use by respondent.

PART II

It is further ordered, That respondent Renuzit Home Products Co., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of motor oils in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner the purpose, content, or conclusions of any test or survey pertaining to motor oils.

PART III

It is further ordered, That respondent Renuzit Home Products Co., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device in connection with the manufacture, advertising, offering for sale, sale,

or distribution of motor oils in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain accurately, documentation that substantiates any and all of respondent's statements or representations on labels or other promotional materials disseminated by respondent or by any officer, representative, agent, employee, subsidiary or division of the respondent, concerning the API Service Classification, SAE Viscosity or any other performance or quality characteristic of motor oils. Such documentation shall be retained by respondent for a period of three years from the date such labels or other promotional materials were last disseminated, and copies thereof shall be furnished to the Commission staff upon reasonable notice.

PART IV

It is further ordered, That respondent distribute a copy of this order to each of its operating divisions, and to all present or future personnel, agents or representatives having advertising, quality control or corporate policy responsibilities with respect to the subject matter of this order and that respondent secure from each such person a signed statement acknowledging receipt of said order.

PART V

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the 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 this order.

PART VI

It is further ordered, That respondent shall, within sixty (60) days after service upon it 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 it has complied with this order.

Renuzit Home Products Company Quality Control Protocol

[Date]

(Supersedes Any Previous Protocols)

I. DOCUMENTATION

A. The purposes for documenting the production of motor oil are to ensure product quality and to allow the identification of the cause of any variation from expected product quality.

B. All blending shall conform to the formulation set out in [name of additive package manufacturer] specification [identification name or number of specification] ([date of specification]). A motor oil blended to this specification received passing scores in engine sequence tests (SAE Technical Report J183) [test identification number] on [date of test score report] by [name and address of testing laboratory].

C. Each blend run shall be documented on a Blend Request Form. Each Blend Request Form shall contain the following information for each blend run:

1. blend run identification number;
2. blending tank number;
3. blending date;
4. time blending began;
5. time blending was completed;
6. total agitation time;
7. SAE grade;
8. API service classification;
9. blend stock storage tank identification number, and amount by volume of each base stock used in the blend run;
10. additive storage tank identification number or other container identification, and amount by volume of each additive package, viscosity index improver or other nonbase stock component of the blend;
11. total volume of final product;
12. blend formula identification name or number;
13. blend formulation by percent volume of each component used;
14. name of the person in charge of producing the blend run;
15. name of the person taking the blend run quality control sample;
16. name of the testing laboratory to which the blend run quality control sample is submitted; and
17. quality control manager's name, approval and date of approval.
18. identification number of the holding tank the blend run is transferred to; and
19. date of transfer to the holding tank, if different from the blending date.

D. All base stock, additives, viscosity index improvers and other components shall be recorded according to the date of delivery, invoice number, manufacturer and storage tank or other container.

E. All Blend Request Forms, component invoices, lists of blend component code numbers, blend formula specifications, Daily Gallonage Tankage Reports, Production Cards, Daily Production Record, Daily Laboratory Reports, and other documents relevant to a blend run shall be segregated and retained on file for three years after the date each blend run is produced.

II. BLEND SAMPLING

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A. Upon completion of a blend run, the blending tank shall be sampled according to the then current ASTM Standard D 270-65 "Standard Method of Sampling Petroleum and Petroleum Products", or any succeeding document that has the same force and effect. The sample should be divided into equal portions.

B. Each blend run quality control sample portion shall be tagged and identified by blend run identification number, tank number, SAE grade, API service classification, and gallonage. Upon completion of identification, one sample portion shall be taken to the laboratory for testing. The other portion shall be retained and safeguarded for one year after the date the run is blended.

III. BLEND APPROVAL

A. Packaging of a blended product may *not* take place under any circumstances until the product has been approved by the Quality Control Manager after examination of the results of the laboratory tests on each blend run.

B. Approval of blended products shall be based on the results of the series of tests listed below. Reference is to the current version of these tests, or any succeeding document that has the same force and effect.

1. Multigrade oils:

a. Grades:

SAE 10w30 API Service Classification SF-CC
SAE 10w40 API Service Classification SF-CC
SAE 10w50 API Service Classification SF-CC
SAE 20w50 API Service Classification SF-CC

b. Tests Required:

Kinematic Viscosity @ 210°F	ASTM D445
Cold Cranking Simulator @ 0°F	ASTM D2602
API Gravity	ASTM D287
Color	ASTM D1500
Elemental analysis of:	
Barium, Calcium, Magnesium, Phosphorus and	
Zinc (see Appendix A for analysis procedure)	

2. Single-grade oils:

a. Grades:

SAE 10 API Service Classification SF-CC
SAE 20 API Service Classification SF-CC
SAE 30 API Service Classification SF-CC
SAE 40 API Service Classification SF-CC

b. Tests Required:

Kinematic Viscosity @ 100°F	ASTM D445
Kinematic Viscosity @ 210°F	ASTM D445
Viscosity Index	ASTM D2770
API Gravity	ASTM D287
Color	ASTM D1500
Elemental analysis of:	
Barium, Calcium, Magnesium, Phosphorus and	
Zinc (see Appendix A for analysis procedure)	

C. The results of the testing listed above shall be recorded by laboratory personnel on the Blend Request Form and the Daily Laboratory Report.

D. Each Blend Request Form shall be reviewed by the Quality Control Manager for *final* approval. Approval shall be based on the comparison of the test results for the blend run quality control sample to the specifications concerning viscosity set out in SAE Technical Report J300d, "Engine Oil Viscosity Classification", or any succeeding document that has the same force and effect, and data concerning additive levels supplied by [name of additive package manufacturer]. (See [blend formula specifications]).

E. Once final approval is given by the Quality Control Manager, the product shall be entered on the Daily Gallonage Tankage Report, which shall identify each blend by SAE grade, API service classification, tank number, blend run identification number and date blended.

IV. PACKAGING OF APPROVED BLENDED PRODUCT

The Daily Gallonage Tankage Report shall be used as a guide by the Production Manager when assigning work to the filling lines. Instructions shall be issued via the Daily Production Record, which shall identify the tank from which oil of a particular viscosity grade and API service classification shall be drawn, the size of containers to be filled, the quantity to be filled, and the date coding to be used. All filled cases of motor oil containers shall be date coded as per the Production Card.

V. FILLING INSPECTION OF APPROVED PRODUCT

A. It is the Filling Line Foreman's responsibility to obtain a sample directly from the filling pipe line for each product being filled. A filling sample shall be obtained within the first five minutes of the filling production run, identified by SAE grade, size and type of container being filled and the identification number of the tank the product is being drawn from, and immediately taken to the laboratory. If a large filling production run of the same product is interrupted by a rest or lunch period, another filling sample shall be taken when a new start-up is made.

B. The tests required to be performed by the laboratory on a filling sample are the same as those required for blend run quality control samples under Paragraph III above, with the exception of elemental analysis. Filling shall stop immediately upon discovery of any deviation in the filling sample test results from the blend run quality control sample test results for the product being tested. Filling may resume only if upon the testing of additional filling samples, the product obtains test results conforming to the results from the testing of the blend run quality control sample. All cases filled prior to a stoppage shall be tagged defective and disposed of.

APPENDIX A

Elemental analysis is performed by: [name of laboratory] A Baird's atomic emission spectrometer or other appropriate equipment shall be used to determine the parts per million of the additive metals in the finished oils. The testing equipment test element shall be calibrated in accordance with the standards for [identification name or number of the blending formula] supplied by [name of additive manufacturer] via Renuzit.

Blend run quality control samples sent to [name of laboratory] for analysis shall be identified by the SAE grade of the product and by the blend run identification number preceded by the number representing the month of the year in which the oil is

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produced. [Name of laboratory] shall verbally transmit to Renuzit the results of the elemental analysis on the day the analysis of the blend run quality control sample is performed, with written confirmation to be received by Renuzit within five working days after completion of the tests.

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

Docket 8918. Interlocutory Order, Jan. 21, 1982

ORDER DENYING PETITION FOR RECONSIDERATION

Respondent American Home Products Corporation ("AHP") has requested Commission reconsideration of its opinion and final order in this matter, pursuant to Rule 3.55 of the Commission's Rules of Practice. Rule 3.55 reads, in relevant part, that any request for reconsideration "must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the Commission."

Respondent argues that reconsideration should be granted because it was not given an opportunity to address the "substantial question" theory which it alleges was the basis for the substantiation and disclosure requirements in the final order. It notes that the Commission decided the so-called "substantial question" allegations of the complaint on deception grounds, and argues that it could not have anticipated such a result given that the Administrative Law Judge relied on a theory of unfairness in resolving these allegations against respondent. AHP also challenges the basis for the Commission's conclusion that consumers were deceived by AHP's failure to disclose the existence of a substantial question in the scientific-medical community. AHP argues that the conclusion rests on assumptions regarding consumer beliefs about the level of proof for its comparative superiority claims for Anacin that were not in issue below and are unsupported by the record of this proceeding. Finally, AHP argues that it is especially important for the Commission to consider anew its decision in this matter not only because of the allegedly "new" question of consumer beliefs, but because the composition of the Commission has changed since the opinion and final order were issued on September 9, 1981.

We believe that granting respondent's request for reconsideration would be inappropriate. The complaint made it clear that the alleged failure to disclose the existence of a substantial question about AHP's comparative superiority claims, if proven, was an unfair or deceptive practice in violation of Section 5 of the FTC Act. (Comp. ¶¶ 12-14, 25, 27). Thus, AHP was placed on notice from the very beginning that there was a "substantial question" issue which might be decided on the basis of a finding of deception. Further, as the record clearly demonstrates and as complaint counsel point out, Answer to Motion at 2-3, Respondent AHP has vigorously litigated