

Complaint

104 F.T.C.

IN THE MATTER OF

CALIFORNIA-TEXAS OIL COMPANY, ET AL.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3138. Complaint, July 16, 1984—Decision, July 16, 1984*

This consent order requires a Glendale, Ca. company and its corporate president to cease making mileage or emission improvement claims for the "AWECO Mileage Extender" or any gasoline additive or automotive device, unless the claims can be substantiated by competent and reliable scientific tests. Respondents must also prominently disclose any material limitations or inferences that can be drawn from test results used to substantiate mileage or emission reduction claims. The order further bars the company from making any fuel economy or automotive emission performance claims using the phrase "up to" or words of similar import, unless a substantial number of consumers, under normal driving conditions, can achieve the maximum level of performance claimed.

Appearances

For the Commission: *Paul R. Roark*, Los Angeles, Ca.

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 California-Texas Oil Company, a California corporation, and Eileen M. Robertson, individually and as an officer and director of said 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:

PARAGRAPH 1. Respondent California-Texas Oil Company ("CTO of California") is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 605 N. Louise Street, Glendale, California.

Respondent Eileen M. Robertson is president, a director and part owner of CTO of California. She formulates, directs and controls the acts and practices of said corporate respondent, including the acts and

practices hereinafter set forth. Her address is the same as that of CTO of California.

PAR. 2. Respondents are now and for some time past have been engaged in manufacturing, offering for sale, sale, and distribution of a product known as AWECO Mileage Extender (hereinafter "AWECO"). Respondents, in connection with their offering AWECO for sale, have also published and disseminated, and now publish and disseminate, advertisements and other sales promotional materials for the purpose of promoting the sale of AWECO. AWECO is an automobile gasoline additive advertised to be a means of substantially improving fuel economy in automobiles and of reducing automobile emissions.

PAR. 3. In the course and conduct of their said business, respondents have disseminated and caused the dissemination of certain advertisements of AWECO by various means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, including, but not limited to, television broadcasts of interstate transmission and the insertion of advertisements in newspapers with interstate circulations, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of AWECO in or affecting commerce.

PAR. 4. Among the advertisements and other sales promotional materials disseminated by respondents are the advertisements identified as Exhibit A, which is attached hereto.

PAR. 5. Through the use of the advertisements referred to in Paragraph Four and other advertisements and sales promotional materials, respondents represented and now represent, directly or by implication, that:

- a. Use of AWECO in an automobile is proven to increase mileage by an average of 15%.
- b. Use of AWECO in an automobile is proven to increase mileage by 15%, or close to 15%.
- c. Use of AWECO in an automobile is proven to increase mileage by up to 15%.
- d. Use of AWECO in an automobile is proven to substantially improve fuel economy.
- e. Competent and reliable tests prove the fuel economy claims made for AWECO.

PAR. 6. By and through the use of these and other representations, respondents have represented, directly or by implication, that:

- a. Use of AWECO in an automobile will increase mileage by an average of 15% under circumstances normally and expectably encountered by consumers.

b. Use of AWECO in an automobile will increase mileage by 15% or close to 15% under circumstances normally and expectably encountered by consumers.

c. Use of AWECO in an automobile will increase mileage by up to 15% under circumstances normally and expectably encountered by consumers.

d. Use of AWECO in an automobile will substantially improve fuel economy under circumstances normally and expectably encountered by consumers.

e. Competent and reliable tests prove the fuel economy claims made for AWECO.

PAR. 7. In truth and in fact, contrary to respondents' representations in Paragraph Five:

a. Few, if any, consumers under circumstances normally and expectably encountered will, when using AWECO as directed in an automobile, extend mileage by an average of 15%, by 15%, or by up to 15%.

b. Few, if any, consumers under circumstances normally and expectably encountered will, when using AWECO as directed in an automobile, substantially improve fuel economy.

c. No competent and reliable tests prove the fuel economy claims made for AWECO.

Therefore, said advertisements and other sales promotional materials disseminated by respondents are false or deceptive.

PAR. 8. At the time respondents made the representations alleged in Paragraph Five of the complaint, they did not possess and rely upon a reasonable basis for such representations because, *inter alia*:

a. Respondents' tests were not designed or conducted to assess product performance in a manner appropriate and relevant to the representations made. For example:

1. Road tests were conducted under conditions different from those recommended in the instructions to consumers,

2. Both the drivers in the road tests and those conducting the tests knew when the additive was being added to the vehicles and were encouraged to perform in such way as to assure favorable results for the additive,

3. Cars showing favorable results were tested repeatedly to skew the test results, and

4. Alternator tests were conducted using two different engines in such a way as to make it impossible to know whether the differences in test results were attributable to the presence of the additive or to differences in the engines.

b. Even if respondents' test design and conduct were appropriate, they did not accurately rely upon the test results in making their performance representations. For example, despite the fact that the road tests showed an average miles per gallon increase in fuel economy of 9%, many of respondents' advertisements contained claims that AWECO would extend mileage by 15%.

c. Respondents' performance representations ignored unfavorable test data. For example:

1. Respondents systematically excluded cars from their road tests that showed no or little mileage improvement from the use of AWECO,

2. Respondents ignored chassis dynamometer tests that showed only a 1.6% increase in urban fuel economy driving and 2.22% increase in highway fuel economy, and

3. Respondents ignored road tests conducted by an independent laboratory that showed only a .99% increase in fuel economy.

Therefore, said advertisements and other sales promotional materials are deceptive and unfair.

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

PAR. 10. In the course and conduct of their business, and at the 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 products for improving automobile mileage and reducing automobile emissions.

PAR. 11. The use by respondents of the aforesaid false or deceptive representations, and the dissemination of the aforesaid false or deceptive advertisements and other sales promotional materials have had and now have 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 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 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. The acts and practices of respondents, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

EXHIBIT A

AWECO

TITLE: "GROW"
JOB NO.: TBD

LENGTH: 30 SECONDS
DATE: 5-10-80



VOCAL: WATCH YOUR
MILEAGE...



GROW...



GROW...



GROW...



WITH AWECO.



ANNCR (VO): Introducing...



AWECO Mileage Extender.



Proven to increase MPG up
to 15%.



For most drivers, that's 1500
extra miles a year.
VOCAL: AWECO



ANNCR (VO): ~~Introducing~~
works.



VOCAL: WATCH YOUR
MILEAGE...



GROW...



GROW



GROW...



WITH...



AWECO.



MUSIC: BUTTON

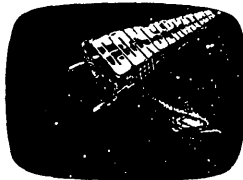
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AWECO

TITLE: "GALAXY"
JOB NO.: TBDLENGTH: 30 SECONDS
DATE: 5/10/80

MUSIC SPACEY



ANNCR (VO): Out of the galaxy of theories orbiting the gasoline crisis...



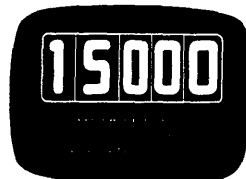
one real answer has taken shape.



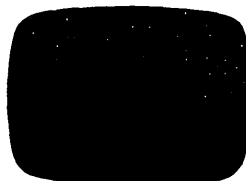
AWECO Mileage extender.



Proven to increase mileage up to 15%.



For most drivers, that's 1500 extra miles a year.

AWECO. The only ~~one~~ *it really works.*SFX: CAR SPEEDING AWAY
MUSIC: UP FULL

ANNCR (VO): It will save you gas...



and it will do it now.



AWECO.

Watch your mileage grow, grow, grow ... AWECO Mileage Extender has been proven to increase mileage an average of 15%. That's over 1,500 extra miles per year for the average driver. AWECO Mileage Extender is a patented secret formulation of non-pollutant chemicals that improves fuel economy by increasing combustion efficiency, thus cutting carbon monoxide emissions by up to 52%. (EPA Certified Lab Report). Unlike other so-called better mileage

products, AWECO is not just a cleaning agent but a product specifically formulated to create a more complete burning of the gasoline. By using AWECO regularly you'll have less engine buildup and lower overall engine maintenance costs. Plugs last longer and tune-ups last longer. AWECO Mileage Extender can increase your mileage. Just add AWECO once every 1,000 miles and watch your mileage grow ...

**INCREASE
YOUR
MILEAGE
15%**



B41667

**Adding AWECO Mileage Extender
is like adding a reserve tank to your car.**

DECISION AND ORDER

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

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of 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 California-Texas Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1173 North Westmoreland Avenue, in the City of Los Angeles, State of California.

Respondent Eileen M. Robertson is an officer of said corporation. She formulates, directs and controls the policies, acts and practices of said corporation, and her 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

I.

It is ordered, That respondent California-Texas Oil Company, a corporation, its successors and assigns, and its officers, and respondent Eileen M. Robertson, individually and as an officer and director of the corporate respondent, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of the gas additive known as AWECO Mileage Extender ("AWECO"), any other fuel additive, any engine oil additive, or any automobile retrofit device, as "automobile retrofit device" is defined in Section 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 any such additive or 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;
2. At the time of making such representation, respondents possess and rely upon, as substantiation for the representation, written results of competent and reliable scientific testing that isolate the effects of the additive or device. Respondents may use such tests as the then current urban dynamometer driving schedule (40 C.F.R. 86, Appendix I) or the then current highway fuel economy driving schedule (40 C.F.R. 600, Appendix I) established by the Environmental Protection Agency or other tests of an equivalent competency and reliability; and
3. Respondents, when using the results of any test(s) required by this Part, clearly and prominently disclose with such representation any material limitation upon the test results or inferences that can be drawn from the results.

b. Representing, directly or by implication, that any such additive or device will or may result in a reduction in automotive emissions from the operation of an automobile, truck, recreational vehicle or other motor vehicle when installed in such vehicle unless:

1. Such representation is true;
2. At the time of making such representation, respondents possess and rely upon written results of competent and reliable scientific

testing, as substantiation for the representation, done by a laboratory using tests such as, or equivalent in competency and reliability to, a chassis dynamometer test performed according to the 1975 Federal Test Procedure; and

3. Respondents, when using the results of any test(s) required by this Part, clearly and prominently disclose with such representation any material limitation upon the test results or inferences that can be drawn from the results.

c. Making any fuel economy or automotive emissions performance claim which uses the phrase "up to" or words of similar import, unless the maximum level of performance claimed can be achieved by an appreciable number of consumers under circumstances normally and expectable encountered by consumers.

d. Representing, directly or by implication, that any performance claim about any such additive or device is based upon any competent and reliable test(s) or survey(s), unless such representation is true.

e. Misrepresenting, in any manner, the purpose, content, or conclusion of any test or survey pertaining to any such additive or device.

For the purposes of Part I, a competent and reliable test means one in which persons qualified to do so conduct the test and evaluate its results in an objective manner using procedures that ensure accurate and reliable results.

II.

It is further ordered, That respondents, in connection with the advertising, labeling, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to maintain accurately the following records, which shall be available for inspection by Commission staff upon request: copies of and dissemination schedules for all advertisements and labels, other sales promotional materials, and post-purchase materials disseminated by respondents directly or through any business entity; copies of all documents generated by the requirements of Parts III and IV of this order. Such documentation shall be retained by respondents for a period of three (3) years from the last date any such advertising or material is disseminated, except that documentation relating to Parts III and IV of the order shall be retained by respondents for a period of three (3) years from the last date a copy of this order is disseminated.

III.

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

IV.

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

V.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of her present business or employment. In addition, for a period of 5 years from the date of service of this order, the individual respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the individual respondent's new business address and a statement of the nature of the business employment in which the respondent is newly engaged as well as a description of the individual respondent's duties and responsibilities 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.

VI.

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