

IN THE MATTER OF
PITTSBURGH PENN OIL COMPANY, ET AL.

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

Docket 9203. Complaint, Jan. 16, 1986—Decision, Sept. 29, 1986

This consent order requires, among other things, a Creighton, Pa. automotive fluids company to cease falsely representing that its automotive oils, transmission fluids and antifreeze meet standardized industry ratings and standards established by Ford and General Motors.

Appearances

For the Commission: *James K. Leonard, Nathan P. Owen and Tamra S. Kempf.*

For the respondents: *Stephen J. Laidhold, Lampl, Sable, Makoroff & Libenson, Pittsburgh, Pa.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Pittsburgh Penn Oil Company, a corporation, and Fred Danovitz, individually and as an officer of said corporation ("respondents"), have violated Section 5 of the Federal Trade Commission Act and, it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. (a) Respondent Pittsburgh Penn Oil Company is a Pennsylvania corporation with its principal office and place of business located at Box 296, Route 28, Freeport Road, Creighton, PA.

(b) Respondent Fred Danovitz is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office and place of business is the same as that of the corporate respondent.

(c) Respondents cooperate and act together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents are, and have been, engaged in the production and sale of substantial quantities of engine oil, automatic transmission fluid, antifreeze-coolant and other automotive and petroleum products. Respondents package their products under the brand names of the corporate respondent, including Prize Penn, Sure-Matic and

Sure Permanent, and under the brand names of independent merchandisers.

PAR. 3. In the course and conduct of their business, respondents cause their products to be sent to purchasers in various States of the United States. Respondents prepare promotional and labeling materials for their products and disseminate these materials in various States of the United States. Respondents maintain, and at all times relevant herein have maintained, a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and in order to induce the sale of their engine oils, respondents have made statements in their promotional literature and on their containers of engine oil. Typical of these statements are the following:

1. SAE 10W-40
2. Exceeds requirements for A.P.I. service classifications—SC, SD, SF

PAR. 5. Through the use of these and other similar statements, respondents have represented, directly or by implication, that respondents' engine oils have met the standards established by the Society of Automotive Engineers ("SAE") and the American Petroleum Institute ("API") for the stated SAE viscosity and API service classification, respectively.

PAR. 6. In truth and in fact, in numerous instances, respondents' engine oils have not met the standards established by the SAE and the API for the stated SAE viscosity and API service classification, respectively. Therefore, the representation set forth in Paragraph Five has been, and is, false and misleading.

PAR. 7. In the course and conduct of their business, and in order to induce the sale of their engine oils, respondents have made statements on their containers of engine oil not labeled with any API service classification. Typical of these statements are the following:

1. High grade lubricant for modern high-speed motors
2. Longer engine life for the new long-life engines

PAR. 8. Through the use of these and other similar statements, respondents have represented, directly or by implication, that respondents' engine oils were suitable for use in engines manufactured in model years 1980 to the present.

PAR. 9. In truth and in fact, in numerous instances, respondents' engine oils have not been suitable for use in engines manufactured in model years 1980 to the present. Therefore, the representation set forth in Paragraph Eight has been, and is, false and misleading.

PAR. 10. In the course and conduct of their business, and in order to induce the sale of their automatic transmission fluids, respondents have made statements on their containers of automatic transmission fluid. Typical of these statements are the following:

1. "DEXRON® II" or "a substitute for DEXRON® II"
2. "Type F"
3. "Ford Approved"

PAR. 11. Through the use of these and other similar statements, respondents have respectively represented, directly or by implication, that respondents' automatic transmission fluids have met the standards established by General Motors Corporation for DEXRON® II transmission fluids, have met the standards established by Ford Motor Company for Type F automatic transmission fluids, and have been approved by Ford Motor Company.

PAR. 12. In truth and in fact, in numerous instances, respondents' automatic transmission fluids have not met the standards established by General Motors Corporation for DEXRON® II automatic transmission fluids, have not met the standards established by Ford Motor Company for Type F automatic transmission fluids, and have not been approved by Ford Motor Company. Therefore, the representations set forth in Paragraph Eleven have been, and are, false and misleading.

PAR. 13. In the course and conduct of their business, and in order to induce the sale of their antifreeze-coolants, respondents have made statements on their containers of antifreeze-coolant. Typical of these statements is a "protection chart" stating that respondents' antifreeze-coolant has afforded given levels of protection against freezing in engine cooling systems, including protection against freezing down to -34 degrees F. when respondents' antifreeze-coolant has been mixed with an equal amount of water.

PAR. 14. Through the use of this chart and other similar statements, respondents have represented, directly or by implication, that respondents' antifreeze-coolant has afforded the stated levels of protection against freezing in engine cooling systems, including protection down to -34 degrees F. when mixed with an equal amount of water.

PAR. 15. In truth and in fact, in numerous instances, respondents' antifreeze-coolant has not afforded the stated levels of protection against freezing in engine cooling systems, including protection down to -34 degrees F. when mixed with an equal amount of water. Therefore, the representation set forth in Paragraph Fourteen has been, and is, false and misleading.

PAR. 16. Through the use of the statements described in Paragraphs Four, Seven, Ten and Thirteen and the use of other similar statements, respondents have represented, directly or by implication, that

at the times of making the representations set forth in Paragraphs Five, Eight, Eleven and Fourteen, respectively, respondents possessed and relied upon a reasonable basis for making those representations.

PAR. 17. In truth and in fact, at such times respondents did not possess and rely upon a reasonable basis for making such representations. Therefore, the representation set forth in Paragraph Sixteen was, and is, false and misleading.

PAR. 18. Respondents' dissemination of the aforesaid material representations and the placement in the hands of others of means and instrumentalities by and through which others may have used the aforesaid representations have had, and now have, the likelihood to mislead consumers and to induce such consumers to purchase and use respondents' engine oils, automatic transmission fluids and anti-freeze-coolants.

PAR. 19. The acts or practices of respondents as alleged in this complaint constituted and now constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the 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 Secretary of the Commission having withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter 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 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Pittsburgh Penn Oil Company is a Pennsylvania

corporation with its principal office and place of business located at Box 296, Route 28, Freeport Road, Creighton, PA.

Respondent Fred Danovitz is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office and place of business is the same as that of the corporate respondent.

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

ORDER

I.

It is ordered, That respondents Pittsburgh Penn Oil Company, a corporation, its successors and assigns, and its officers, and Fred Danovitz, individually and as an officer of the corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the production, labeling, advertising, offering for sale, sale or distribution of any engine oil, automatic transmission fluid or antifreeze-coolant 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 (e.g., by making a product claim such as "high grade lubricant for modern high-speed motors" or "longer engine life for the new long-life engines"), that any engine oil has any American Petroleum Institute (API) service classification;

B. Representing, directly or by implication, that any engine oil has any Society of Automotive Engineers (SAE) viscosity;

C. Representing, directly or by implication, that any automatic transmission fluid has been approved by or meets any specification set by General Motors Corporation, Ford Motor Company or any other company;

D. Representing, directly or by implication, that any antifreeze-coolant affords a stated level of protection against freezing in engine cooling systems; or

E. Representing, directly or by implication, that any engine oil, automatic transmission fluid or antifreeze-coolant possesses any other performance or quality characteristic or has been tested or approved;

unless such representation is true and unless, at the time of making such representation, respondents, their successors or assigns possess and rely upon competent and reliable evidence which substantiates the representation.

II.

It is further ordered, That respondents, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the production, labeling, advertising, offering for sale, sale or distribution of any automotive or petroleum product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, that any such product possesses any performance or quality characteristic or has been tested or approved.

III.

It is further ordered, That respondents, their successors and assigns shall draw a representative sample from each production batch or run, and from each filling run, of engine oil, automatic transmission fluid and antifreeze-coolant, shall document the method or methods used to draw such samples, and shall for at least one year retain and upon reasonable notice make available to the Commission for inspection and testing a properly marked portion of each such sample and that for a period of three (3) years after the date of service of this order respondents, their successors and assigns shall, at the option of the Commission, cause to be tested (as described below) by a competent and independent laboratory approved by the Commission, at the expense of respondents, their successors or assigns, up to seventy-five (75) samples of engine oil, automatic transmission fluid and/or antifreeze-coolant, the samples being either such retained samples or samples sold by respondents, their successors or assigns, and shall submit to the Commission copies of the results of such tests within twenty (20) days after the Commission has identified the retained sample(s) to be tested or has tendered the sold sample(s) to be tested, as the case may be; *provided, however,* that the twenty (20)-day period shall be extended by the length of any delay during the period beyond the control of respondents, their successors or assigns:

A. Engine oil samples tested pursuant to this Part shall be subjected to the then current version of the following American Society for

Testing and Materials (ASTM) tests and other tests or any succeeding tests that have the same force and effect:

1. Kinematic viscosity at 100 degrees C. (ASTM D445);
2. Low-temperature viscosity (multi-temperature version of ASTM D2602, described in Appendix A of SAE J300 APR 84) (test required only for multigrade oils);
3. Borderline pumping temperature (ASTM D3829) (test required only for multigrade oils);
4. Nitrogen (ASTM D3228 or chemiluminescence);
5. Sulfated ash (ASTM D874);
6. Total Base Number (ASTM D2896); and
7. Elemental analysis showing parts per million of barium, calcium, magnesium, phosphorus, sodium, and zinc (emission spectrometry or other generally accepted method).

B. Automatic transmission fluid samples tested pursuant to this Part shall be subjected to the then current version of the following tests or any succeeding tests that have the same force and effect:

1. Kinematic viscosity at 100 degrees C. (ASTM D445);
2. Flash point (ASTM D92);
3. Brookfield viscosity at -40 degrees C. (ASTM D2983);
4. Nitrogen (ASTM D3228 or chemiluminescence); and
5. Elemental analysis showing parts per million of boron, calcium, phosphorus, sulfur, and zinc (emission spectrometry or other generally accepted method).

C. Antifreeze-coolant samples tested pursuant to this Part shall be subjected to the then current version of the following tests or any succeeding tests that have the same force and effect:

1. Specific gravity (ASTM D1122);
2. Freezing point, 50% by volume in distilled water (ASTM D1177);
3. Boiling point, 50% by volume in distilled water (ASTM D1120);
4. pH, 50% by volume in distilled water (ASTM D1287);
5. Reserve alkalinity (ASTM D1121);
6. Water, % by weight (ASTM D1123); and
7. Elemental analysis showing parts per million of boron, phosphorus, silicon, and sodium (emission spectrometry or other generally accepted method).

IV.

It is further ordered, That respondents, their successors and assigns shall clearly and indelibly mark each container or the outside of each case of engine oil, automatic transmission fluid and antifreeze-coolant

with information identifying the relevant production batch(es) or run(s), production date(s) and filling date(s); *provided*, that containers so marked shall be marked on the day of filling, and cases so marked shall be marked on the day of packing.

V.

It is further ordered, That respondents, their successors and assigns shall retain records which substantiate any representation covered by this order for three (3) years after the last date on which the representation was made and upon reasonable notice shall make such records available to the Commission for inspection and copying; *provided*, that for engine oils, automatic transmission fluids and antifreeze-coolants produced or packaged by respondents, their successors or assigns, such records shall include blend formulas and specifications; formulas and specifications supplied to respondents, their successors or assigns by additive companies; documents describing the physical and chemical characteristics of additives purchased by respondents, their successors or assigns; pertinent licensing agreements; records describing purchases and inventories of base stocks and additives of respondents, their successors or assigns; records showing for each production batch or run the production date, the tank(s) used, the quantity of each ingredient used, the date of transfer to another tank(s), the tank(s) so used, the quantity transferred to each tank, and the results of quality control tests run; records showing for each filling run the filling date, the tank(s) used, the quantity drawn from each tank, the size and number of containers filled, the results of quality control tests run, and, if known at the time of the filling run, the shipping destination and intended customer; and records indicating the dates on which each tank used in production or filling is emptied.

VI.

It is further ordered, That respondents, their successors and assigns shall retain records of their sales of engine oil, automatic transmission fluid and antifreeze-coolant for three (3) years after each such sale which identify the name and address of each purchaser and the quantity of each of these products sold to each purchaser, shall retain for three (3) years from the date of their first possession all documents, including letters from consumers, customers and industry members and responses thereto, which constitute or relate to a complaint about or an unfavorable assessment of any engine oil, automatic transmission fluid or antifreeze-coolant sold by respondents, their

successors or assigns and upon reasonable notice shall make such records and documents available to the Commission for inspection and copying; *provided*, that, this Part VI shall apply only to such sales and first possessions occurring within five (5) years of the date of service of this order.

VII.

It is further ordered, That respondent Pittsburgh Penn Oil Company, its successors and assigns shall forthwith distribute a copy of this order to each of its subsidiaries and divisions and to all present and future agents, representatives and employees having responsibilities for advertising, production, packaging, quality control or corporate policy with respect to the subject matter of this order, shall secure from each such person a signed and dated statement acknowledging receipt of the order and shall maintain such statement for three (3) years after the end of such person's employment by respondent, its successors or assigns.

VIII.

It is further ordered, That respondent Fred Danovitz shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that, for a period of ten (10) years from the date of service of this order, respondent Fred Danovitz shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the production, labeling, advertising, offering for sale, sale or distribution of any automotive, petroleum or chemical product and of his affiliation with any new business or employment in which his own duties or responsibilities involve the production, labeling, advertising, offering for sale, sale or distribution of any automotive, petroleum or chemical product, with each such notice to include his new business address and a statement of the nature of the business or employment in which he is newly engaged, as well as a description of his duties and responsibilities in connection with the business or employment.

IX.

It is further ordered, That respondent Pittsburgh Penn Oil Company, its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change to itself, such as dissolution, assignment or sale resulting in the emergence of a successor

corporation, the creation or dissolution of subsidiaries or any other change which may affect compliance obligations arising out of this order.

X.

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

IN THE MATTER OF

INTERCO INCORPORATED, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION AND CLAYTON ACTS

Docket C-2929. Consent Order, Sept. 26, 1978—Modifying Order, Oct. 3, 1986

The Federal Trade Commission has modified a 1978 consent order with respondents by setting aside the portions of the order pertaining to the exclusive dealing prohibitions. The Commission concluded that respondents do not have the market power to exclude competitors.

ORDER REOPENING AND SETTING ASIDE PORTIONS OF ORDER
ISSUED SEPTEMBER 26, 1978

On May 6, 1986, respondents Interco Incorporated ("Interco"), Londontown Corporation ("Londontown") and Queen Casuals, Inc. ("Queen Casuals") filed a "Request As Supplemented To Reopen And Set Aside Part Of Order" ("Request"), pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice. Londontown and Queen Casuals are wholly owned subsidiaries of Interco. The Request asked the Commission to reopen the consent order issued on September 26, 1978, ("the order") and set aside paragraphs (1) and (2) of Part II of the order. [92 F.T.C. 404]

Paragraphs (1) and (2) of Part II of the order are applicable only to respondents' footwear products. Paragraph (1) of Part II forbids respondents from enforcing any agreement, understanding or arrangement which prevents resellers or prospective resellers from selling the footwear products of competitors or from independently determining the volume of footwear to be purchased from competitors. Paragraph (2) of Part II prohibits respondents from requiring or inducing resellers to cancel orders for or not purchase footwear products supplied by competitors.

After reviewing respondents' Request, the Commission has concluded that the public interest warrants reopening and setting aside the mentioned paragraphs of the order as requested by respondents. The action we take today is consistent with our previous determinations in *Brown Shoe Company, Inc.*, Docket No. 7606, July 16, 1984 [104 F.T.C. 266], and in *International Shoe Company*, Docket No. 6835, January 30, 1985 [105 F.T.C. 191]. In both of those matters the Commission set aside perpetual exclusive dealing orders in the footwear industry. The same considerations which prompted our actions in