

IN THE MATTER OF
RADIATOR SPECIALTY COMPANY ET AL.

COMPLAINT, DECISION, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 5790. Complaint, June 27, 1950—Decision, Dec. 4, 1952*¹

Where a corporation and its two officers, engaged in the interstate sale and distribution of a gasoline additive designated as "Nu-Power" and "Nu-Power Upper Cylinder Lubricant"; and also of its "Nu-Power Tune-Up Solvent", supplied with a "Vacuumatic Injector"; in advertisements and pamphlets, leaflets, and copies of testimonial letters and on labels on containers—

- (a) Falsely represented that "Nu-Power Upper Cylinder Lubricant", used as directed, would increase mileage obtained from gasoline and oil, add motor power and improve engine performance, create faster pick-up, and cause smoother motor idling;
- (b) Falsely represented that it would keep spark plugs cleaner, free sticky valves, reduce gas knocks and ping, supply requisite lubrication for valves, valve stems, upper cylinders and piston rings; and keep valves and rings free;
- (c) Falsely represented that it would lengthen the life of spark plug and valves, reduce friction and prevent wear, protect metal surfaces, cause quicker starting, and increase compression; and
- (d) Falsely represented that it was a special combination of heat-resisting oils and would prevent wear and scuffing of cylinder walls;

With tendency and capacity to deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby induce its purchase of their said product:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

As respects a formal stipulation executed by respondent Blumenthal, president of the corporate respondent, on May 12, 1944, and accepted by the Commission, namely, as Stipulation No. 03215, 38 F. T. C. 819, in which respondents admitted, among other things, that the fuel value or energy of gasoline was not affected by the addition of "Nu-Power", that tests had not conclusively demonstrated that a 25% increase in mileage might be obtained by its use, that it would not keep spark plugs clean or eliminate knocks from motor ping; and agreed, in the event of a future complaint and formal proceedings that such stipulation might be received as evidence of the prior use by respondent corporation of the acts and practices referred to: such stipulation was relevant and was received in evidence.

¹ "Decision", etc. announcing failure of appeal, and fruition of initial decision, dated June 9, 1953.

In the aforesaid connection, despite respondents' assertions that there had been no violations of said stipulation, partly because of the change in the formula of "Lubrizol", the asserted effective solvent ingredient of "Nu-Power", the weight of the testimony was to the contrary and to the effect that "Nu-Power" would have none of the qualities or virtues ascribed to it no matter what quantity or formula of "Lubrizol" was used in its composition.

In said general connection, it was realized that the proceeding was not brought specifically to enforce the terms of the stipulation, which was a link in the chain of evidence, pertinent to be considered in the premises and to receive the weight which was its due, especially concerning the admissions against interest therein contained.

In considering the test made by four experts of the Bureau of Standards, who testified at the instance of the Commission—without interest in the outcome of the proceeding, insofar as known to or observed by the examiner and the four witnesses who testified for respondents, the examiner noted that the latter were all officers or employees of the corporation which made the aforesaid patented product "Lubrizol"—the main and active ingredient of respondents' "Nu-Power"—and from which, as its sole supplier, respondent corporation had for years purchased the same, and the interest of respondents' witnesses in retaining the business of respondents' customer, as reflected in their testimony.

In further appraising the testimony of the experts of the Bureau and that of the witnesses testifying for respondents, involving tests which were highly technical in character and, as respects the latter, the absence of any allowance, in connection with various infinitesimal measurements, for many imponderables and for normal range of experimental errors; it was concluded that even under the selected conditions, reduced gasoline consumption was not significant, and that remaining conclusions were likewise not sufficient, on the basis of actual tests or otherwise, to justify to the public the broad, unequivocal and unqualified claims set out in behalf of the product.

As respects the charges of the complaint with regard to respondents' other product, namely its "Nu-Power Tune Up Solvent": there was a total failure of proof, no tests were made, and inconclusive expressions of opinion wholly failed to substantiate the same; and while the product was composed essentially of the same or similar active ingredients as the "Nu-Power Upper Cylinder Lubricant", the formulae differed as did the method of application and use.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Maurice A. Weinstein, of Charlotte, N. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, having reason to believe that Radiator Specialty Company, a corporation, and I. D. Blumenthal, Herman Blumenthal, and Edward F. Morgan, individually and as officers of

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Radiator Specialty Company, a corporation, hereinafter 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 Radiator Specialty Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina and respondents I. D. Blumenthal, Herman Blumenthal and Edward F. Morgan, individuals, are President, Vice-President and Secretary, respectively, thereof. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondent, and all of said respondents have cooperated with each other and have acted in concert in doing the acts and things hereinafter alleged. Respondents' office and principal place of business is located at 1700-1900 Dowd Road, Charlotte, North Carolina.

PAR. 2. Respondents are now and have been for more than a year last past engaged in the sale and distribution of a solution, for mixing or blending with gasoline when gasoline is to be used as a motor fuel, called Nu-Power and also called Nu-Power Upper Cylinder Lubricant, and another solution called Nu-Power Tune-Up Solvent with which is supplied a device called a Vacuumatic Injector.

The respondents cause, and have caused, each of their said products, when sold, to be shipped from their factory or said place of business in the State of North Carolina to the purchasers thereof at their respective residences located in various other States of the United States and in the District of Columbia. The respondents maintain, and at all times mentioned herein have maintained, a course of trade in each of said products, in commerce, among and between the various States of the United States and in the District of Columbia. Respondents' volume of business in each of said products in commerce is and has been substantial.

PAR. 3. (a) Respondents' directions for the use of Nu-Power are to add 4 ounces thereof to each 10 gallons or less of gasoline; to "Pour in Tank—It Mixes Itself." Directions for Nu-Power Upper Cylinder Lubricant are to "use regularly in proportion of 4 ounces to each 5 gallons of gasoline * * * particularly while breaking in a new car. If car is in excellent condition, use 4 ounces to each 10 gallons of gasoline."

The formula for Nu-Power is the same as the formula for Nu-Power Upper Cylinder Lubricant; viz, "Latus 22, 308 lbs., and Lubrizol 506, 82 lbs."

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(b) Respondents' directions for applying Nu-Power Tune-Up Solvent with the Vacuumatic Injector are as follows:

Just attach the Injector to the carburetor throat, remove the spark plug and in its place insert the correct size Adaptor. (Three Adaptors are furnished to fit all spark plug openings). With the motor running at smooth idling speed, an accurately measured amount (2 ounces) of Nu-Power Tune-Up Solvent is slowly atomized, full strength, directly into the cylinder. Each cylinder is treated individually, thereby insuring results not possible with any other method. This treatment should be given every 5,000 miles.

The formula for Nu-Power Tune-Up Solvent is: "Drip Oil, 5 lbs.; Latus 22, 84 lbs.; Lubrizol, 10 lbs.; Shell Penetrating Oil, 1 lb.; and Black Dye."

PAR. 4. In the course and conduct of their said business and for the purpose of inducing the purchase of their said product called Nu-Power and Nu-Power Upper Cylinder Lubricant respectively, hereinafter referred to as Nu-Power, and their product Nu-Power Tune-Up Solvent, in commerce, respondents have made many statements and representations relative to their value and effectiveness by means of advertisements in the form of pamphlets, leaflets, copies of testimonial letters, and labels on the containers thereof. Among and typical of the statements and representations contained in said advertisements concerning the said product Nu-Power are the following:

Nu-Power * * * INCREASES Gasoline Mileage and Improves Engine Performance.

Create Faster Pick-Up.

Develop Better Pull.

Keep Spark Plugs Cleaner.

Free Sticky Valves.

Reduce Gas Knocks and "Ping".

Achieve Greater Economy of Operation.

INCREASE MILEAGE—PEP—POWER.

Nu-Power UPPER CYLINDER LUBRICANT * * * For A SMOOTHER, MORE POWERFUL MOTOR * * * with increased gasoline and oil mileage.

INSTANT LUBRICATION FOR VALVES, * * * valve stems, upper cylinders and piston rings—parts that motor oils can't reach.

Keeps Valves and Rings Free.

Lengthens Spark Plug and Valve Life.

Reduces Friction * * * Prevents Wear.

Protects Metal Surfaces.

Smoother Idling.

Improves Pick-Up.

Quicker Cold-Weather Starting.

Increases Power and Compression.

* * * assures easy starting. * * *

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Nu-Power Upper Cylinder Lubricant is a special combination of heat resisting oils * * *.

* * * prevents wear and scuffing of cylinder walls * * *.

Among and typical of the statements and representations contained in said advertisements concerning Nu-Power TUNE-UP SOLVENT are the following:

Continually Raises Compression.

Insures Quicker Starting.

PAR. 5. By the use of the statements and representations hereinabove set forth and others similar thereto, not specifically set out herein, respondents have represented and now represent, directly or indirectly, that their product Nu-Power, when used as directed, increases the mileage obtained from gasoline and oil; causes a motor to be more powerful and improves engine performance; creates faster pick-up; causes smoother idling; keeps spark plugs cleaner; frees sticky valves; reduces gas knocks and ping; supplies the necessary lubrication for valves, valve stems, upper cylinders and piston rings, which are parts that oils do not reach; keeps valves and rings free; lengthens the life of spark plugs and valves; reduces friction and prevents wear; protects metal surfaces; causes quicker starting; increases compression; is a special combination of heat-resisting oils and prevents wear and scuffing of cylinder walls.

Through the use of the aforesaid statements and representations and others similar thereto, not specifically set out herein, concerning their product Nu-Power Tune-Up Solvent, respondents have represented, and now represent, that when used as directed, said product raises compression and insures quicker starting.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, the use of the product Nu-Power, as directed, or otherwise, will not increase the mileage obtained from oil or gas, will not increase the power or improve the engine performance or result in faster pick-up or smoother idling to any significant degree. In the ordinary sense spark plugs become fouled because of deposits accumulated in the operation of the engine and sticky valves are also ordinarily caused by these deposits. This product will not prevent the accumulation of such deposits and accordingly will not keep the spark plugs cleaner nor free sticky valves caused by such deposits. Its use will not reduce gas knocks or pings. Valves, valve stems, upper cylinders and piston rings are adequately lubricated by the oiling systems of automobile engines and the additional use of this product will not result in any benefit to such parts. Said product will not keep the valves and rings free nor will it lengthen the life of

spark plugs or valves. Friction and resulting wear on engine parts are caused by the rubbing of moving parts. This product added to gasoline enters the combustion chamber and is practically all burned during the power stroke of the engine. It consequently would have little effect as a lubricant in reducing friction and preventing wear. Nu-Power is not effective in protecting metal surfaces. The ease of starting an engine is ordinarily determined by the volatility range of the gasoline. The volatility of Nu-Power is such that it can have no effect upon the starting quality of gasoline and consequently its use will not cause engines to start easier or quicker. The heat resisting properties of the oils in this product are not as great as ordinary lubricating oil and from the standpoint of its lubricating value is not as great as lubricating oil. Scuffing and unusual wear of the cylinder walls are usually not caused by lack of lubrication and when they occur are generally caused by poor materials and methods of manufacture. Under these conditions this product would not be of value in preventing wear and scuffing of the cylinder walls.

The product Nu-Power Tune-Up Solvent, used as directed or otherwise, will not raise compression or insure quicker starting.

PAR. 7. The aforesaid false, misleading and deceptive statements and representations made by respondents have had and now have the tendency and capacity to deceive and mislead a substantial portion of the public into the erroneous belief that such representations were and are true and to induce a substantial portion of the public to purchase respondents' said products because of such erroneous belief.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to "Decision of the Commission and Order to File Report of Compliance," dated June 9, 1953,¹ the initial decision in the instant

¹ Said Decision of the Commission, follows :

The initial decision of the hearing examiner having been filed in this proceeding on May 2, 1952, and counsel for respondents having seasonably filed a notice of respondents' intention to appeal therefrom and having filed in addition a motion for an extension of time within which to file an appeal brief ; and

The Commission, on November 7, 1952, having duly entered an order the effect of which was to extend to December 3, 1952, the time within which an appeal brief may have been filed ; and

No appeal brief having been filed within the time so provided and hence no matters having been presented for determination by the Commission :

Therefore, pursuant to Rules XXII and XXIII of the Commission's Rules of Practice, the initial decision of the hearing examiner, a copy of which is hereto attached, did on December 4, 1952, become the decision of the Commission ; and, accordingly :

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matter of hearing examiner James A. Purcell, as set out as follows, became on December 4, 1952 the decision of the Commission.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 27, 1950, issued and subsequently served its complaint in this proceeding upon respondents Radiator Specialty Company, a corporation, and I. D. Blumenthal, Herman Blumenthal and Edward F. Morgan, individually and as officers of the corporate respondent, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of joint answers by the corporate respondent and two of the individual respondents, I. D. Blumenthal and Herman Blumenthal, hearings were held at which testimony and other evidence in support of the complaint and in opposition to the allegations of said complaint were introduced before the above-named Hearing Examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said Hearing Examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel in support of the complaint and counsel for the respondents, oral argument thereon not having been requested; and said Hearing Examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Radiator Specialty Company is a corporation, existing and doing business by virtue of the laws of the State of North Carolina; respondents I. D. Blumenthal and Herman Blumenthal, individuals, are President and Vice-President, respectively, of the corporate respondent, and as such have dominant control of the advertising policies and business activities of the said corporate respondent. All of said respondents have cooperated with each other and acted in concert in doing the acts and things hereinafter

It is ordered, That the respondent, Radiator Specialty Company, a corporation, and the respondents, I. D. Blumenthal and Herman Blumenthal 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 the order contained in said decision.

