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Complaint

Federal Trade Commission has ordered ABC Consolidated Corporation, its subsidiaries and affiliates, including respondent Berlo Vending Company, and their respective officers, directors, representatives, agents and employees, directly or through any corporate or other device, forthwith to cease and desist from inducing and receiving or receiving any price, allowance, term, exclusive package, or other consideration, or thing of value, when, in either inducing and receiving or receiving, respondents know or should know that such price, allowance, term, exclusive package, or other consideration or thing of value is not affirmatively offered and made available on proportionally equal terms to all of respondents' competitors operating concessions in motion picture theaters.

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Respondents shall periodically, within sixty (60) days from the date of service of this Order and every ninety (90) days thereafter until divestiture is fully effected, submit to the Commission a detailed written report of their actions, plans, and progress, in complying with the provisions of this Order and fulfilling its objectives.

IN THE MATTER OF

DOUBLE EAGLE LUBRICANTS, INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 8589. Complaint, July 29, 1963—Decision, Oct. 22, 1964

Order requiring Oklahoma City sellers of previously used lubricating motor oil which they purchased from filling stations and other sources and then "re-refined" in their refinery plant, to cease selling such reclaimed oil without disclosing the prior use in advertising and promotional material and by a conspicuous statement to that effect on the front panel of containers; and to cease representing that reclaimed oil was manufactured from oil that had not been previously used.

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 Double Eagle Lubricants, Inc., a corporation, and Frank A. Kerran and Cameron L. Kerran, individually and as officers of said 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 Double Eagle Lubricants, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Oklahoma. Individual respondents Frank A. Kerran and Cameron L. Kerran are officers of said corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. All respondents have a principal office and place of business at 1900 N.E. 1st Street, Oklahoma City, Oklahoma.

PAR. 2. Respondents are now, and for more than three years last past have been, engaged in the sale and distribution of reclaimed, or reprocessed, used lubricating oil to dealers for resale to the purchasing public. Among brand names under which these said products are sold are "Double Eagle," "Gold Bond," "Heat Pruf," "Arrow," "Golden West," "Native State" and "C and G." Respondents cause and have caused said products when sold to be transported from their place of business in the State of Oklahoma to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. In the course and conduct of their business, respondents are now, and have been, in competition with individuals and with firms and other corporations engaged in the sale and distribution of lubricating oil in commerce between and among the various States of the United States.

PAR. 4. Respondents' oil consists in whole or in substantial part of used oil, obtained from drainings of motor crank cases and from other sources, which is thereafter reclaimed or reprocessed. Said oil is sold in containers of the same general size, kind and appearance as those used for new oil and has the appearance of new and unused oil. In some instances the containers bear no markings of any kind indicating that said product is reclaimed or reprocessed used oil. Respondents' disclosure, if and when made, are in such a manner and location on the container in which said lubricating oils are packaged that the disclosure is not clear and conspicuous to the purchaser or potential purchaser.

In the absence of a clear and conspicuous disclosure on the containers that the oil therein is used, reclaimed or reprocessed, the general understanding and belief on the part of dealers and of the purchasing public is that oil sold in containers such as are used by respondents is,

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in fact, new oil and not used, reclaimed or reprocessed oil. This belief is enhanced by the representations printed on the most conspicuous and prominent portion of respondents' oil containers as follows:

- (1) **DOUBLE EAGLE**
(Drawing of a double headed eagle perched on ribbon on which is stated:
"Guards Your Motor")
MOTOR OIL
Double Eagle Lubricants, Inc., Oklahoma City, Okla.
- (2) **GOLDEN WEST MOTOR OIL**
Quality Clear thru Double Eagle Lubricants, Inc., Oklahoma City, Okla.
- (3) **HEAT PRUF**
Motor Oil Resists Heat
- (4) **ARROW**
Motor Oil
- (5) **NATIVE**
State
Motor Oil
- (6) **C and G**
Motor Oil

This belief is further enhanced by respondents' use of the word "RE-REFINED" in large print on the containers in which said lubricating oils are packaged.

Therefore, the statements and representations and acts and practices set forth above, are false, misleading and deceptive.

PAR. 5. Respondents use the word "Guaranteed" on many of the brand name containers in which said lubricating oil is packaged thereby representing that said products are guaranteed in every respect.

PAR. 6. In truth and in fact, the guarantee provided did not disclose the terms, conditions or the extent of the application of the Guarantee. Therefore, said statement and representation was false, misleading and deceptive.

PAR. 7. Respondents' said acts and practices further serve to place in the hands of the uninformed or unscrupulous dealers a means and instrumentality whereby such persons may mislead the purchasing public with respect to the nature of respondents' product.

PAR. 8. The aforesaid acts and practices of the respondents, and the failure to clearly and conspicuously disclose that their oil is composed in whole or in part of used oil which has been reclaimed or reprocessed, has had and now has, the tendency and capacity to mislead and deceive a substantial number of retailers and members of the purchasing public into the erroneous and mistaken belief that said oil is refined by respondents from virgin crude oil, and to induce the

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purchasing public to purchase substantial quantities of respondents' product because of such erroneous and mistaken belief.

PAR. 9. The aforesaid 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 in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

Mr. Charles S. Cox supporting the complaint.

Mr. John B. Ogden of Oklahoma City, Okla, for the respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

JANUARY 13, 1964

Double Eagle Lubricants, Inc., a corporation, and Frank A. Kerran and Cameron L. Kerran, individually, and as officers of said corporation, hereinafter called respondents, are charged in a complaint issued by the Federal Trade Commission on July 29, 1963, with deceptive practices in the sale of previously used engine lubricating oil, alleged to be in violation of Section 5 of the Federal Trade Commission Act.

The respondents answered and denied the charging allegations of the complaint. A hearing has been held at which oral testimony and documentary evidence was received in support of and in opposition to the allegations of the complaint. Proposed findings of fact, conclusions of law and order have been filed by respective counsel. These have been considered. All proposed findings of fact and conclusions of law not found or concluded herein are rejected. Upon the basis of the entire record, the undersigned hearing examiner makes the following findings of fact and conclusions of law, and issues the following order:

FINDINGS OF FACT

1. The respondent, Double Eagle Lubricants, Inc., is a corporation, incorporated and doing business under the laws of the State of Oklahoma. The individual respondents, Frank A. Kerran, and Cameron L. Kerran, are President and Secretary-Treasurer, respectively, of Double Eagle Lubricants, Inc. The office and place of business of all respondents is 1900 N.E. First Street, Oklahoma City, Oklahoma. The individual respondents formulate, direct and control the acts and practices of the corporate respondent.

2. Respondents are now and for more than three years last past

have been engaged in the sale of petroleum products, principally previously used lubricating motor oil, which respondents obtain by purchase from filling stations and from various sources in other states, and then "re-refine" in their refinery plant located in Oklahoma City, Oklahoma. Respondents' "re-refining" process is somewhat similar to the refining process which the major integrated oil companies employ in refining virgin crude oil in their refineries. However, in refining virgin crude oil, several products are obtained from the crude in addition to lubricating oil, such as gasoline, diesel and fuel oil, along with many by-products; whereas, respondents, in their "re-refining" of previously used lubricating oil, only obtain engine lubricating oil and a low grade fuel oil. Lubricating oil does not necessarily wear out by its use in the crankcase of an automobile or aircraft engine. After continued use in the crankcase of an automobile, for instance, the oil often accumulates gum, carbon deposits and sludge, which are formed by the polymerization and oxidation of certain elements which are inherently present in crude oil. Also, water, dust and shavings from worn parts of the engine may find their way into the crankcase oil. Respondents' "re-refining" process cleans and chemically treats this used oil and removes the gum, carbon deposits, sludge, dirt or other impurities which may have accumulated in the oil. After the used oil has been through respondents' "re-refining" process, it is clear and clean, and resembles lubricating oil as originally refined from virgin crude oil. Respondents sought to offer testimony in support of their contention that their "re-refined" oil is at least equal to if not superior in quality to competing engine lubricating oil sold by the so-called "major" integrated oil companies which has been refined only the first or original time from virgin crude oil. Since the complaint does not question the quality of respondents' oil, the hearing examiner rejected such evidence. The evidence developed that respondents also sell an "automatic transmission fluid", identified as CX 8. However, since this automatic transmission fluid (CX 8) is not included in the complaint herein, it is not involved in this decision.

3. After respondents re-refine the used lubricating oil, respondents then place it in one-quart and gallon-size metal cans for sale and distribution to filling stations located in various States of the United States. These stations in turn resell the oil at retail to motorists and others who call at these filling stations for servicing of their automobiles. It is only the one-quart cans or containers sold by respondents which are involved in this proceeding, identified and received in evidence as CX 1-6, inclusive. The one-quart cans containing respondents' re-refined lubricating oil are of the same general size and appearance

as those generally used in the trade. The only difference being the labels on the cans. It is the labeling on respondents' one-quart cans (CX 1-6), which are complained about in this proceeding. This labeling will be discussed in detail hereafter in this decision.

4. The evidence shows, and it is found, that respondents' business in interstate commerce is substantial, amounting to approximately \$350,000 annually, or approximately one-half of respondents' gross annual sales. In the course of their business, respondents have been and are now in competition with individuals and other corporations engaged in the distribution and sale of lubricating oil in commerce between and among the States of the United States.

5. The individual respondents, prior to the incorporation of Double Eagle Lubricants, Inc., in 1958 or 1959, were doing business in Oklahoma City under the name of Double Eagle Refining Company, and were the respondents in a complaint, Docket No. 6432, issued by the Federal Trade Commission on October 29, 1955, alleging that respondents therein had violated the Federal Trade Commission Act by distributing and selling in commerce lubricating oil without indicating on the containers that the oil was previously used oil. After a formal hearing before a hearing examiner, the Commission, on February 14, 1958, issued a final order in which the respondents Frank A. Kerran and Cameron L. Kerran, individually and as copartners trading as Double Eagle Refining Company * * * were ordered to forthwith cease and desist from:

(1) Representing, contrary to the fact, that their lubricating oil is refined or processed from other than previously used oil;

(2) Advertising, offering for sale or selling any lubricating oil which is composed in whole or in part of oil which has been reclaimed or in any manner processed from previously used oil, without disclosing such prior use to the purchaser or potential purchaser in advertising and in sales promotion material, and by a clear and conspicuous statement to that effect on the container.

6. The respondents appealed this decision to the United States Court of Appeals for the Tenth Circuit, and that Court affirmed the Commission's order. *Certiorari* from the United States Supreme Court was denied. Accordingly, the Commission's cease and desist order became final and binding on the respondents in that proceeding. Under the provisions of that cease and desist order, it became a deceptive practice within the intent and meaning of Section 5(a) of the Federal Trade Commission Act, as amended, for respondents in that proceeding to market and sell their re-refined lubricating oil in containers indistinguishable from those used generally to market lubricating oil refined from virgin crude, without "a clear and conspicuous statement" on the can that it was previously used oil.

