

Complaint

66 F.T.C.

unless there are maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

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

---

IN THE MATTER OF

THE PURE OIL COMPANY ET AL.\*

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATIONS OF SEC. 2 (a)  
OF THE CLAYTON AND THE FEDERAL TRADE COMMISSION ACTS

*Dockets 6640, 6898, 7567, 8537. Complaints, Sept. 26, 1956—Decision,  
Dec. 28, 1964*

Order vacating the initial decisions and dismissing the complaints charging four major marketers of gasoline with anti-competitive practices, and announcing a comprehensive industrywide inquiry into the marketing and other competitive problems of the gasoline industry.

COMPLAINT

SEPTEMBER 26, 1956

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated, and is now violating, the provisions of subsection (a) of Section 2 of the Clayton Act (15 U.S.C., Section 13) as amended by the Robinson-Patman Act, approved June 19, 1936, and the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45), 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 with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent Pure Oil Company is a corporation organized, existing and doing business under and by virtue of the laws

---

\*And the following related cases: The Texas Company, Docket No. 6898; Standard Oil Company (Indiana), Docket No. 7567; and Shell Oil Company, Docket No. 8537.

of the State of Ohio, with its principal office and place of business located at 35 East Wacker Drive, Chicago, Illinois.

PAR. 2. Respondent Pure Oil Company is now, and for several years last past has been, among other things, primarily engaged in the sale and distribution of gasoline and other petroleum products throughout the United States under the brand name of "Pure." "Pure" gasoline is nationally advertised and enjoys wide public acceptance.

Respondent occupies a major position in the petroleum industry, being among the Nation's leading producers and marketers of gasoline and other petroleum products. In 1955 respondent produced crude oil and gas from 5,540 net wells in 15 States and the Gulf of Mexico. It has four major refineries strategically located to serve its marketing area. Crude oil processed in these refineries during the year 1955 totalled 60,592,000 barrels compared with 47,178,000 barrels processed in 1954. It has marketing facilities located in twenty-four States and as of December 31, 1955, distributed its products from and through approximately 15,000 retail outlets. Of these, some 15,000 retail outlets respondent operates 93 as company stations, leases some 3,379 stations to independent dealers and has contracts in force of which 8,474 other independent stations under the terms of which "Pure" gasoline and other "Pure" petroleum products are sold. In addition thereto, respondent sells its "Pure" gasoline and other petroleum products to a number of independent jobbers who in turn sell "Pure" gasoline at retail through their own stations and to other independent gasoline service station operators. Some 3,288 stations are to be found in this latter category.

PAR. 3. Respondent Pure Oil Company markets its gasoline and other petroleum products on a nationwide basis through its own company-owned and operated stations as well as under dealer contracts. In the latter category, respondent has entered into dealer contracts with approximately 120 dealers located in the Birmingham, Alabama, area, now in force, obligating said respondent to sell and deliver to such dealers all of their respective requirements of respondent's brand of gasoline during the term of such contracts.

PAR. 4. For the purpose of supplying said customers, and in making delivery pursuant to said contracts, respondent ships or otherwise transports its gasoline from its refinery in Baton Rouge, Louisiana, to Birmingham, Alabama, through the facilities of the Plantation Pipe Line from which it is distributed to said dealers. There is now and has been at all times mentioned herein a continuous stream of trade in commerce, as "commerce" is defined in the Clayton Act, of said gasoline between respondent's Baton Rouge, Louisiana, refinery, terminals and

distribution points, and said retail dealers purchasing said gasoline in Birmingham, Alabama. All of such purchases by said retail dealers are and have been in the course of such commerce. Said gasoline is transported into Alabama by respondent and there sold by respondent for resale in the Birmingham, Alabama, area.

PAR. 5. Respondent Pure Oil Company, in the course and conduct of its business, is now, and during the times mentioned herein has been, in substantial competition with others engaged in the production, sale and distribution of gasoline and other petroleum products in commerce between and among the various States of the United States and of the District of Columbia.

PAR. 6. Respondent Pure Oil Company, in the course and conduct of its business, has discriminated in price between different purchasers of its gasoline of like grade and quality by selling it to certain of its customers at higher prices than it did to other of its customers.

Since on or about December 29, 1955, respondent Pure Oil Company, in the course and conduct of its business, as above described, has sold its gasoline to certain dealers located in and around Birmingham, Alabama, at prices substantially lower than the prices charged by said respondent to other of its retail purchasers of gasoline located in the State of Alabama as well as in other States of the United States.

PAR. 7. The effect of the aforesaid discriminations or of any appreciable part thereof has been or may be substantially to lessen competition or tend to create a monopoly in the lines of commerce in which respondent and its favored customers are respectively engaged, or to injure, destroy or prevent competition with respondent or with said favored customers who receive the benefits of said discriminations or with the customers of either of them.

PAR. 8. The foregoing alleged discrimination in price made by respondent Pure Oil Company are in violation of subsection (a) of Section 2 of the Clayton Act, as amended.

#### COUNT II

PAR. 9. The allegations of Paragraphs One through Three of Count I of this complaint are hereby adopted and incorporated herein by reference and made a part of this Count II the same as if they were repeated herein verbatim.

PAR. 10. In the course and conduct of its business, respondent Pure Oil Company is now and has been at all times referred to herein engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, in that it ships or otherwise transports its gasoline

in tank cars, tankers, pipe lines, and trucks from its different refineries, terminals and distribution points located in various States of the United States to its retail dealers located in the Birmingham, Alabama, area and to various other States of the United States.

PAR. 11. Except to the extent that competition has been hindered, frustrated, lessened and eliminated as set forth in this complaint, respondent has been and is now in substantial competition with other corporations, individuals and partnerships engaged in the sale and distribution of gasoline in "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 12. Beginning in or about December 1955, respondent, acting through its Division Manager, one Fayette G. Shepard, and some 60 odd of its retail dealers, engaged in selling Pure Oil Company gasoline and other petroleum products in the Birmingham, Alabama, area, for the purpose of suppressing, preventing, hindering, and lessening competition in the sale and distribution in such commerce of gasoline, have entered into, maintained and carried out a combination, planned common course of action, understanding and agreement, through which they would fix and maintain, and did fix and maintain, the price at which gasoline was sold or would be sold at retail in the gasoline service stations leased and operated by the some 60 odd retail service stations selling Pure Oil Company gasoline and other petroleum products.

PAR. 13. Pursuant to and in furtherance of the aforesaid unlawful combination, planned common course of action, understanding and agreement, respondent, acting through and with the aforesaid Fayette G. Shepard, together and in conspiracy and combination with the aforesaid some 60 odd retail service station dealers, did and performed the following acts and things:

1. Agreed to attempt to adopt and did to a substantial degree and extent adopt, adhere to and maintain a plan or policy, sometimes designated and referred to as the "Chicago Plan" or "1 cent policy," whereby the posted retail price of gasoline for grades at Pure stations in the Birmingham area would not exceed the price of gasoline for similar grades posted by independent stations selling unbranded grades of gasoline by more than 1 cent in said area.

2. Agreed to fix and maintain, and did fix and maintain, the retail price at which gasoline was sold or to be sold at the various service stations operated by the some 60 odd retail dealers operating under contract with respondent.

3. Agreed to and adhered to certain discounts, terms and conditions upon which the said gasoline would be sold to the some 60 odd retail service stations and to the purchasing public.

Complaint

66 F.T.C.

PAR. 14. This alleged unlawful planned common course of action is singularly unfair, oppressive and to the prejudice of the public and respondent's competitors and retailers of gasoline in the Birmingham, Alabama, marketing area and has a dangerous tendency to unduly restrain, hinder, suppress and eliminate competition between and among respondent's retail dealers and the independent retail dealers located in the Birmingham, Alabama, areas, or others, and has unduly restrained, hindered, suppressed and eliminated competition therein in the sale and distribution of gasoline in commerce within the meaning of the Federal Trade Commission Act and constitutes an unfair method of competition and an unfair act and practice in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

*Mr. Rufus E. Wilson, Mr. Alan Weber, and Mr. Paul D. Scanlon,* for the Commission.

*Howrey, Simon, Baker & Murchison, by Mr. William Simon and Mr. A. Duncan Whitaker of Washington, D.C., and Vinson, Elkins, Weems & Searls, by Mr. Ben A. Harper and Mr. John C. Snodgrass of Palatine, Illinois,* for respondent.

## COMPLAINT\*

SEPTEMBER 27, 1957

The Federal Trade Commission, having reason to believe that The Texas Company, a corporation, hereinafter sometimes referred to as respondent, has violated and is now violating the provisions of Section 2(a) of the Clayton Act (15 U.S.C., Section 13), as amended by the Robinson-Patman Act, approved June 19, 1936, and the provisions of Section 5 of the Federal Trade Commission Act (15 U.S.C., Section 45), 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 with respect thereto as follows:

## COUNT I

PARAGRAPH 1. Respondent, The Texas Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 135 East 42d Street, New York 17, New York. Respondent is now, and for several years last past has been, among other things, engaged in the offering for sale, sale and distribution of gasoline and other petroleum products throughout the United States under the

\*Hearing Examiner's order of Mar. 30, 1959, supplemented complaint to encompass activities allegedly in violation of Count II occurring since the date of the complaint, specifically in the Detroit area from June 1957 to June 1958.

brand names of "Texaco", "Fire Chief", and "Sky Chief". Gasoline sold under these brand names is nationally advertised and enjoys wide public acceptance. Respondent occupies a major position in the petroleum industry, being among the Nation's leading producers and marketers of gasoline and other petroleum products. The Texas Company, is an integrated organization engaged in all aspects of the oil industry and operates throughout the United States in one or more phases of the oil industry, or in related business. In 1956, the respondent produced 148,357,911 barrels of crude oil from its domestic wells. The company owns or leases 11,260,558 acres of productive and prospective land in the United States. At the close of 1956, the respondent's domestic crude and production pipe line system aggregated 6,707 miles. Marine equipment operated by the respondent in 1956 consisted of 76 ocean going vessels with a total capacity of approximately 1,265,000 dead-weight tons. The respondent has a total of 13 refineries located in the States of Texas, Illinois, New Jersey, California, Oklahoma, Wyoming, Montana, Delaware and Rhode Island, and these refineries have a daily aggregate crude capacity of 616,000 barrels. The respondent has approximately 140 terminals located throughout the United States of which 43 are served by pipe line and the balance by ocean or inland waterway. The company's products are marketed in every State of the United States, being sold direct from terminals and refineries and principally marketed through approximately 2,200 bulk stations.

The respondent also owns or leases producing properties, refineries and pipe lines, and markets its products in foreign lands.

PAR. 3. Respondent markets its gasoline and other petroleum products on a nationwide basis through its own company-owned and operated stations as well as under contracts with independent dealer stations. In the latter category, respondent has entered into dealer contracts with dealers, hereinafter referred to as "Texas" or "Texaco" dealers, located in the Portsmouth-Norfolk-Virginia Beach, Virginia, area, and other areas, now in force, and under the provisions thereof respondent sells and delivers to such dealers all of their respective requirements of respondent's brands of gasoline during the terms of such contracts.

PAR. 4. For the purpose of supplying said customers, and in making delivery pursuant to said contracts, respondent ships or otherwise transports its gasolines from its refineries located in various States across State lines, to bulk stations and other distributing points in the aforementioned area, from which it is distributed to said Texaco retail dealers. There is now and has been at all times mentioned herein a continuous stream of trade and commerce, as "commerce" is defined in the

