

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

MAR -9 1961

AT _____ O'CLOCK _____
ROY M. JOHNSON
CLERK

RADIANT BURNERS, INC., sd
Illinois corporation,

Plaintiff,

vs.

NO. 57 C 1167

AMERICAN GAS ASSOCIATION, a New York membership corporation; PEOPLES GAS LIGHT AND COKE COMPANY, an Illinois corporation; NORTHERN ILLINOIS GAS COMPANY, an Illinois corporation; NORTH SHORE GAS COMPANY, an Illinois corporation; AUCOGAS COMPANY, an Illinois corporation; BRYANT MANUFACTURING COMPANY, an Illinois corporation; DELCO APPLIANCE DIVISION OF GENERAL MOTORS CORPORATION, a Delaware corporation; JANITROL HEATING AND AIR-CONDITIONING, a Division of MIDLAND-ROSS CORPORATION, an Ohio corporation; MUELLER CLIMATROL DIVISION OF WASHINGTON CORPORATION, a Delaware corporation; PERMAGLASS DIVISION OF A. O. SMITH CORPORATION, a New York corporation; HEATING AND AIR-CONDITIONING DIVISION OF STEWART-WARNER CORPORATION, a Virginia corporation; GENERAL ELECTRIC COMPANY, a New York corporation; NATURAL GAS PIPELINE OF AMERICA, a Delaware corporation; TEXAS-ILLINOIS NATURAL GAS CO., a Delaware corporation; ESKIL I. BJORK; REMICK McDOWELL; BERNARD H. WITTMANN; DANIEL E. COLLINS; MARVIN CHANDLER; E. E. SHEEHAN; and ROY E. JONES,

Defendants.

THIRD AMENDED COMPLAINT

RADIANT BURNERS, INC., by its attorneys, LEE A. FREEMAN, RICHARD F. LEVY and VICTOR NEUMARK, brings this action against the defendants and complains and alleges as follows:

I.

Jurisdiction

1. This complaint is filed and proceedings are instituted against the defendants under Paragraphs 4 and 16 of the Act of Congress of October 15, 1914, Chap. 323, 38 Stat. 731 and 737, as amended, entitled "An Act to Supplement Existing Laws against Unlawful Restraints and Monopolies, and for Other Purposes," commonly known as the Clayton Act, 15 U.S.C., Paras. 15 and 26, in order to recover the damages sustained by plaintiff by reason of the defendants' violations of Para. 1 of the Act of Congress of July 2, 1890, Chap. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, 15 U.S.C., Para. 1, and to have injunctive relief against said unlawful conduct by defendants.

2. By virtue of Para. 14 of the Clayton Act, 15 U.S.C., Para. 24, the violations of the Sherman Act by the corporations hereinafter described are deemed also to be violations by the

individual directors, officers, or agents of such corporations who authorized, ordered, or did any of the acts constituting in whole or in part such violations.

3. The defendant, AMERICAN GAS ASSOCIATION, INC. (hereinafter called "AGA"), does business in the Northern District of Illinois, and other states of the United States in that it sends its agents regularly and systematically into the Northern District of Illinois, and other states of the United States to inspect products of manufacturers of gas equipment whose products have been approved or listed by AGA and receives money from such manufacturers for such inspections. The defendants, other than AGA, transact business and are found in the Northern District of Illinois.

II.

Plaintiff

4. The plaintiff, RADIANT BURNERS, INC., is an Illinois corporation engaged in the business of manufacturing, selling and distributing gas conversion burners, gas units for installation in gas furnaces, and gas furnaces (hereinafter called "Radiant Burner"), for space heating of homes, commercial and industrial places of business.

III.

Defendants

5. The defendants to this Third Amended Complaint are as follows:

a) AGA, a membership corporation organized under the laws of the State of New York, which includes the following classes of members:

(i) Practically all, if not all, of the gas public utility companies, including the defendant utilities, which have franchised monopolies in the various states of the United States to furnish gas to the public;

(ii) Manufacturers of machinery, appliances, equipment, accessories and devices used or useful in the collection, transmission and distribution of gas, including the defendant manufacturers;

(iii) Pipeline companies which transmit bulk natural gas from places of origin to gas public utilities and large industrial users of gas, including the defendant pipeline companies; and

(iv) Individual members who further or carry out the purposes of AGA as herein described, including the defendant individuals.

b) Utilities:

The Peoples Gas Light and Coke Company,
an Illinois corporation;

Northern Illinois Gas Company,
an Illinois corporation;

North Shore Gas Company,
an Illinois corporation.

c) Manufacturers: The following manufacturers and distributors of gas conversion burners and gas furnaces:

Autogas Company,
an Illinois corporation;

Bryant Manufacturing Company,
an Illinois corporation;

Delco Appliance Division of General
Motors Corporation, a Delaware cor-
poration;

Janitrol Heating and Air-Conditioning,
a Division of Midland-Ross Corporation,
an Ohio corporation;

Mueller Climatrol Division of Worthington
Corporation, a Delaware corporation;

Permaglass Division of A. O. Smith Cor-
poration, a New York corporation;

Heating and Air-Conditioning Division
of Stewart-Warner Corporation, a
Virginia corporation; and

General Electric Company, a New York
corporation.

d) Pipelines:

Natural Gas Pipeline of America, a
Delaware corporation; and

Texas-Illinois Natural Gas Co., a
Delaware corporation.

e) Individuals:

Eskil I. Bjork, Former Chairman of the Board,
Peoples Gas Light and Coke Company, Director,
AGA;

Reedick McDowell, Chairman of the Board,
Peoples Gas Light and Coke Company,
Member, AGA;

Bernard H. Wittmann, Vice President,
Peoples Gas Light and Coke Company,
Member, AGA;

Daniel E. Collins, Manager, Sales Engineering,
Peoples Gas Light and Coke Company,
Member, AGA;

Marvin Chandler, President,
Northern Illinois Gas Company,
Director, AGA;

E. D. Sheehan, Executive Vice President,
Northern Illinois Gas Company,
Member, AGA; and

Roy E. Jones, President,
North Shore Gas Company,
Member, AGA.

17.

Nature of Trade and Commerce Involved

6. The Radiant Burner is manufactured by plaintiff in Lombard, Illinois, of materials and component parts purchased from producers and manufacturers located in Illinois and in states of the United States other than Illinois, which materials and component parts are shipped from those states into Illinois.

7. Plaintiff has sold and distributed the Radiant Burner from its places of manufacture in Illinois to states of the United States other than Illinois. As a direct result of the

combination and conspiracy alleged, plaintiff has been unreasonably restrained and prevented from competing for the business of selling the Radiant Burner in Illinois and states other than Illinois where it has theretofore completed sales or has attempted to make sales.

V.

Offenses Charged

8. Commencing prior to January 1, 1945, and continuing to and including the date of filing of this Third Amended Complaint, defendants, together with other members and non-members of ACA, gas public utilities, gas pipelines, manufacturers of gas conversion burners and gas furnaces, and together with persons, firms and corporations to this plaintiff unknown, have been and are now engaged in an unlawful combination, conspiracy and concert of action to unreasonably restrain and eliminate the competition of plaintiff, and to foreclose plaintiff from the market in violation of Section 1 of the Sherman Act.

9. The defendants have unlawfully conspired and combined, and are presently unlawfully conspiring and combining, with

each other, and with others not named as defendants herein, in violation of Section 1 of the Sherman Act, for the purpose, among others, of controlling the manufacture, sale, distribution, installation and use of gas conversion burners, gas furnaces, and gas heating appliances, equipment, accessories and devices, in the manner described as follows:

a) The defendant, AGA, maintains laboratories in Cleveland, Ohio, and Los Angeles, California, which participate in the establishment of construction requirements and purport to test the utility, durability and safety of gas burners and other gas equipment. These requirements and tests by AGA are not based on valid, unvarying, objective standards, and AGA can arbitrarily and capriciously make and does arbitrarily and capriciously make determinations in respect of whether a given gas conversion burner or gas appliance, equipment, accessory or device is adequately constructed or has passed its test. AGA then affixes its "Laboratories Approval Seal" or "Laboratories Listing Symbol" only on those gas conversion burners and gas appliances, equipment, accessories and devices which meet prescribed construction requirements and which AGA has determined have passed its test.

b) At all times material, an AGA Subcommittee existed and functioned, known as the "Subcommittee on

Listing and Installation Requirements for Domestic Gas Conversion Burners." A majority of the members of this Subcommittee were and are manufacturers of gas conversion burners and other competitive gas appliances, equipment, accessories and devices. These manufacturers were and are competitors and potential competitors of plaintiff.

c) The "Subcommittee on Listing and Installation Requirements for Domestic Gas Conversion Burners" established construction and other requirements for gas conversion burners of the type manufactured and distributed by plaintiff, which requirements had to be satisfied in order to receive AGA approval or listing. At all times material, the Subcommittee's requirements and laboratory tests were not based on objective standards, were influenced by manufacturer members of AGA, some of whom are in competition with plaintiff, and thus its determinations could be made arbitrarily and capriciously and could operate to arbitrarily deny and foreclose plaintiff from receiving AGA approval or listing. These requirements have, at all times material, been enforced by the AGA, its committees and laboratories.

d) The AGA Subcommittee on Listing Requirements for Domestic Gas Conversion Burners, and its "working group,"

has specifically denied AGA approval or listing to the Radiant Burner.

e) The gas public utility defendants are regulated monopolies in the various communities which they serve, and as such, have power to influence, and have and do influence, prospective purchasers of gas conversion burners and other gas equipment not to purchase and use the plaintiff's product.

f) The defendant utilities, pipelines, manufacturers and individuals, as well as individuals, firms and corporations to the plaintiff unknown, have joined AGA, or accepted membership in AGA, for the purpose, among other things, of controlling the manufacture, sale, installation and use of gas conversion burners, gas furnaces and other gas equipment.

g) It has not been and is not now possible to successfully sell, market and distribute the Radiant Burner manufactured by the plaintiff, since it is not approved or listed by AGA, because AGA and its gas public utility and individual members have effectuated and are effectuating the plan and purpose of the unlawful combination and conspiracy alleged herein by conduct and action, including:

(i) The refusal to provide gas for use in the plaintiff's Radiant Burner on the alleged ground that it is not approved or listed by AGA.

(ii) The refusal or withdrawal of authorization and certification of dealers of gas conversion burners and gas equipment who handle or sell the plaintiff's Radiant Burner.

(iii) The preparation and circulation of false and misleading reports to the effect that unless gas appliances, equipment, accessories, devices, mechanisms and products are approved or listed by AGA, they are unsafe or unreliable or are lacking in durability.

(iv) Gas utilities, which have the first contact with prospective purchasers of gas conversion burners and other gas equipment, have discouraged and do now discourage these prospective purchasers from purchasing and installing the Radiant Burner, which is not approved or listed by AGA, and encourage such prospective consumers to purchase only AGA-approved products by, among other actions, permitting gas appliances, equipment, accessories and devices approved by AGA to be exhibited in the public areas of their show-rooms and stores, and by refusing to permit the exhibit of gas appliances, equipment, accessories and devices (including the plaintiff's) which have not been approved or listed by AGA.

b) The plan and purpose of AGA and its fellow-conspirators, including the defendants herein named, members of the illegal combination and conspiracy herein alleged, to work together to a single end of restraining the trade and commerce of manufacturers of gas appliances, equipment, accessories and devices not approved or listed by AGA, including the Radiant Burner, is shown by the following statement made in a brochure published by AGA entitled, "What You Should Know About Your Laboratories":

'The Approval Plan - Our Theme Song.

"Our basic theme song is the Approval Plan. Through voluntary national standards, or as we call them requirements, the plan seeks to provide consumers with safe gas appliances and accessories of substantial and durable construction which will give satisfactory performance when properly installed. Not only must we be familiar with the theme song, but we must all sing in tune if we would be successful. * * *

* * *

"Don't accept equipment which is not AGA-approved."

VI.

Damages

10. Patent No. 2,781,088 has been issued to the plaintiff covering the Radiant Burner. Said patent application was pending from November 20, 1952.

11. Plaintiff has been prevented, by the unlawful combination and conspiracy alleged herein, from making sales of its Radiant Burner, and from realizing substantial profits therefrom. The Radiant Burner is safer and more efficient than, and just as durable as, gas conversion burners which AGA has approved. In addition, plaintiff has incurred substantial expenses in connection with the development and promotion of the Radiant Burner and has suffered substantial injury to its reputation and good will.

Plaintiff has sustained actual damage in its business and property to the date of this Third Amended Complaint by reason of defendants' unlawful violation of the Federal anti-trust laws in excess of EIGHT MILLION (\$8,000,000.00) DOLLARS. Plaintiff's total damages being trebled, as provided in the Clayton Act, are in excess of TWENTY-FOUR MILLION (\$24,000,000.00) DOLLARS.

12. The aforesaid conspiracy is continuing and will continue to cause irreparable loss and damage to the plaintiff and to the public unless equitable relief is granted. No complete and adequate remedy at law exists.

WHEREFORE, plaintiff prays that after a hearing:

(A) A joint and several judgment be entered against the defendants in the total amount of TWENTY-FOUR MILLION (\$24,000,000.00) DOLLARS in favor of plaintiff;

(B) In addition thereto, there be allowed by the Court to plaintiff its reasonable attorneys' fees and cost of suit as provided by statute;

(C) The defendant, AGA, its directors, officers, representatives, agents, attorneys and employees, be enjoined and restrained from assuming to pass upon the acceptability of gas conversion burners and equipment,

and be further ordered to notify all ACA members and all distributors and users of gas conversion burners and gas equipment of the provisions of this injunction;

(D) The defendants, their directors, officers, representatives, agents, attorneys and employees be enjoined and restrained from preventing or hindering plaintiff from selling, distributing, marketing and installing the Radiant Burner.

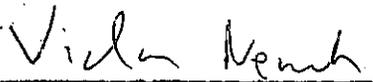
(E) The Court grant such other and further relief as it may deem proper.



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Attorneys for Plaintiff,
RADIANT BURNERS, INC.

DATED: March 9, 1961

JURY DEMAND

The plaintiff pursuant to Rule 38 of the Rules of Civil Procedure for the District Courts of the United States has demanded and does now demand a trial by jury of all issues tendered by the above and foregoing complaint, except the issue of whether or not the plaintiff is entitled to the equitable injunctive relief prayed.

RADIANT BURNERS, INC., Plaintiff

By Lee A. Freeman
Lee A. Freeman
Richard F. Levy
Richard F. Levy
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AMERICAN GAS ASSOCIATION, INC., a
New York membership corporation;
PEOPLES GAS LIGHT AND COKE COMPANY,
a corporation, et al.,
Defendants.

AMENDMENT TO THIRD AMENDED COMPLAINT

The Third Amended Complaint is hereby amended in the following particulars:

The name "BRYANT MANUFACTURING COMPANY, an Illinois corporation," is deleted from the caption and from Paragraph 5(c) of the Complaint as a party defendant, and there is substituted in its place the name "BRYANT MANUFACTURING COMPANY DIVISION OF CARRIER CORPORATION, a Delaware corporation."

RADIANT BURNERS, INC., Plaintiff

By Lee A. Freeman
Lee A. Freeman

DATED: April 24, 1961.

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