

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

RADIANT BURNERS, INC., an Illinois
corporation,

Plaintiff

-vs-

AMERICAN GAS ASSOCIATION, INC., a not-for-profit
corporation; ALLIED GAS CO., a corporation;
AUTOGAS COMPANY, a corporation; CENTRAL ILLINOIS
ELECTRIC AND GAS CO., a corporation; CENTRAL
ILLINOIS PUBLIC SERVICE COMPANY, an Illinois
corporation; CENTRAL INDIANA GAS COMPANY, an
Indiana corporation; CITIZENS GAS & COKE
UTILITY, an Indiana corporation; CROWN STOVE
WORKS, a corporation; FLORENCE STOVE COMPANY,
a corporation; GAS APPLIANCE SERVICE, INC.,
a corporation; ILLINOIS POWER COMPANY, an
Illinois corporation; INDIANA GAS & WATER
COMPANY, an Indiana corporation; IOWA-ILLINOIS
GAS & ELECTRIC COMPANY, an Illinois corporation;
MID-CONTINENT METAL PRODUCTS COMPANY, a
corporation; MICHIGAN CONSOLIDATED LIGHT
COMPANY, a Michigan corporation; MILWAUKEE GAS
& LIGHT COMPANY, a Wisconsin corporation;
NATURAL GAS PIPELINE CO. OF AMERICA, a
corporation; NORTHERN ILLINOIS GAS COMPANY,
an Illinois corporation; NORTHERN INDIANA
PUBLIC SERVICE COMPANY, an Indiana corporation;
NORGE SALES CORPORATION, a corporation; NORTH
SHORE GAS CO., an Illinois corporation;
PEOPLES GAS, LIGHT & COKE COMPANY, an Illinois
corporation; PORTLAND GAS & COKE COMPANY, a
Washington corporation; SELLERS ENGINEERING
COMPANY, a corporation; TEXAS-ILLINOIS NATURAL
GAS PIPELINE CO., a corporation; WASHINGTON
NATURAL GAS COMPANY, a Washington corporation;
WISCONSIN-MICHIGAN POWER COMPANY, a Wisconsin
corporation,

Defendants

No.
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C O M P L A I N T

I

Jurisdiction and Venue

1. Jurisdiction of this Court is invoked pursuant to USC Title 15, Sections 15 and 26.

II

Plaintiff

2. The plaintiff, RADIANT BURNERS, INC., is an Illinois corporation and is in the business of manufacturing, selling and distributing gas burners for space heating in homes and commercial and industrial places of business.

III

Defendants

3. The following association and corporations are named as defendants herein:

a. AMERICAN GAS ASSOCIATION, INC., a not-for-profit corporation, organized pursuant to the laws of the State of New York, composed of member gas utility corporations and gas burner and appliance manufacturing suppliers which are incorporated and doing business in several States of the United States, and others.

b. ALLIED GAS CO., a corporation; AUTOGAS COMPANY, a corporation; CENTRAL ILLINOIS ELECTRIC AND GAS CO., a corporation; CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, an Illinois

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corporation; CENTRAL INDIANA GAS COMPANY, an Indiana corporation; CITIZENS GAS & COKE UTILITY, an Indiana corporation; CROWN STOVE WORKS, a corporation; FLORENCE STOVE COMPANY, a corporation; GAS APPLIANCE SERVICE, INC., a corporation; ILLINOIS POWER COMPANY, an Illinois corporation; INDIANA GAS & WATER COMPANY, an Indiana corporation; IOWA-ILLINOIS GAS & ELECTRIC COMPANY, an Illinois corporation; MID-CONTINENT METAL PRODUCTS COMPANY, a corporation; MICHIGAN CONSOLIDATED LIGHT COMPANY, a Michigan corporation; MILWAUKEE GAS & LIGHT COMPANY, a Wisconsin corporation; NATURAL GAS PIPELINE CO. OF AMERICA, a corporation; NORTHERN ILLINOIS GAS COMPANY, an Illinois corporation; NORTHERN INDIANA PUBLIC SERVICE COMPANY, an Indiana corporation; NORGE SALES CORPORATION, a corporation; NORTH SHORE GAS CO., an Illinois corporation; PEOPLES GAS, LIGHT & COKE COMPANY, an Illinois corporation; PORTLAND GAS & COKE COMPANY, a Washington corporation; SELLERS ENGINEERING COMPANY, a corporation; TEXAS-ILLINOIS NATURAL GAS PIPELINE CO., a corporation; WASHINGTON NATURAL GAS COMPANY, a Washington corporation; WISCONSIN-MICHIGAN POWER COMPANY, a Wisconsin corporation.

IV

Nature of Trade and Commerce Involved

4. The defendant, AMERICAN GAS ASSOCIATION, INC., a not-for-profit corporation, is engaged in commerce within the

meaning of USC Title 15, Section 1 by virtue of its administrative, coordinative and supervisory activities with reference to its member corporations, which are incorporated and doing business in various States of the United States.

5. The defendant gas utility corporations are engaged in commerce within the meaning of USC Title 15, Section 1 in that they transport and receive gas transported from one State of the United States to another State of the United States.

6. The defendant gas burner and appliance manufacturing suppliers are engaged in commerce within the meaning of USC Title 15, Section 1 in that they manufacture products from materials which are transported from one State into another State of the United States and/or distribute such products for sale or use in States other than the State in which such products were manufactured.

V

Violations Charged

7. The defendants, other than AMERICAN GAS ASSOCIATION, INC. are gas utility corporations and gas burner and appliance manufacturing suppliers in competition with the plaintiff, and have conspired and combined with each other in violation of USC Title 15, Section 1 in that they have either formed or joined AMERICAN GAS ASSOCIATION, INC. for the purpose, among others, of controlling the use and installation of gas burners, gas heating devices, and other gas appliances, in the

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manner described in the paragraphs which follow.

8. The defendant, AMERICAN GAS ASSOCIATION, INC. has laboratories in Cleveland, Ohio, and Los Angeles, California, each of which purports to test the utility, reliability, durability and safety of gas burners and appliances. The tests made by AMERICAN GAS ASSOCIATION, INC. are not based on valid, unvarying, objective standards, and AMERICAN GAS ASSOCIATION, INC. can and does arbitrarily and capriciously make determinations in respect of whether or not a given gas burner or appliance has passed its test. AMERICAN GAS ASSOCIATION, INC. then affixes its seal of approval only on those gas burners and appliances which it has determined to have passed its test.

9. The defendant gas burner and appliance manufacturing suppliers which are in competition with the plaintiff, along with the defendant gas utility corporations, are represented on the committee of AMERICAN GAS ASSOCIATION, INC. which decides whether or not given gas burners and appliances warrant AMERICAN GAS ASSOCIATION, INC. approval.

10. AMERICAN GAS ASSOCIATION, INC. has refused to consider evidence of the safety, reliability, durability and utility of the plaintiff's gas burner and has employed invalid, varying standards in evaluating the plaintiff's gas burner and has otherwise acted in an arbitrary and capricious manner in rejecting the plaintiff's requests for AMERICAN GAS ASSOCIATION, INC. approval for its gas burner.

11. The gas utility corporation defendants are legal

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monopolies in the various communities in which they serve gas, and as such have great power and influence in respect of the gas burners and appliances which are installed and used in such communities.

12. AMERICAN GAS ASSOCIATION, INC. manifests its intent that its gas utility members effectuate its refusal to approve the plaintiff's and others' gas burners and appliances by the following language which appears on page three of a pamphlet 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."

13. The defendant gas utility corporations and other gas utility corporation members of AMERICAN GAS ASSOCIATION, INC. have effectuated the refusal of AMERICAN GAS ASSOCIATION, INC. to affix its seal of approval on the plaintiff's, and others', gas burners and appliances in one or more of the following ways:

- a. By refusing to provide gas for use in the plaintiff's gas burner and other gas heating devices and appliances which are not approved by AMERICAN GAS ASSOCIATION, INC.
- b. By refusing or withdrawing authorization

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and certification of dealers of gas burners and appliances who handle or sell the plaintiff's gas burner or other gas heating devices and appliances which are not approved by AMERICAN GAS ASSOCIATION, INC.

c. By causing the preparation and circulation of false and misleading reports which are designed to glorify gas burners and appliances approved by AMERICAN GAS ASSOCIATION, INC. and to malign the plaintiff's gas burner and other gas heating devices and appliances which are not approved by AMERICAN GAS ASSOCIATION, INC. in the opinion of the gas consuming public.

d. In addition, the plaintiff is informed and believes and therefore states the fact to be that such defendants have used municipalities and other governmental agencies to pass ordinances which require that no gas burner shall be used within its limits unless such gas burner bears the seal of approval of AMERICAN GAS ASSOCIATION, INC.

VI

Damages

14. By reason of the aforesaid combination and conspiracy, the plaintiff has been unable to recover substantial sums which it has expended in the development, manufacture and attempted sale of its gas burner and has suffered the loss of substantial profits which it otherwise would have obtained.

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The plaintiff's said losses are continuing and will continue unless the relief hereinafter requested is granted.

Prayer

1. Plaintiff prays judgment against the defendants, and each of them, for three times the damages sustained by the plaintiff by reason of the unlawful combination and conspiracy hereinbefore described, together with reasonable attorneys' fees and the costs and expenses incurred in the prosecution of this action.

2. Plaintiff prays that the defendant AMERICAN GAS ASSOCIATION, INC. be enjoined from purporting to pass upon the acceptability of gas burners and appliances and be further ordered to notify all AMERICAN GAS ASSOCIATION, INC. members and all distributors and users of gas burners and appliances of the provisions of this injunction.

3. Plaintiff prays that the defendants and their directors, officers and representatives and their successors be enjoined and restrained from combining and conspiring to prevent the plaintiff from marketing its gas burner and from authorizing, directing or doing any act to interfere with the plaintiff in its business of distributing gas burners.

4. That the Court grant the plaintiff such other

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and further relief as the case may require and as the Court
.does deem proper.

5. A jury trial is hereby demanded under Rule 38(b)
of the Federal Rules of Civil Procedure.



Victor Neumark



Joseph Keig, Sr.



John O'G. Fitzgerald

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General No. **57C1167**

In the United States District Court
For the Northern District of Illinois
Eastern Division

RADIANT BURNERS, INC., an Illinois corporation,

Plaintiff

-vs-

AMERICAN GAS ASSOCIATION, INC., a not-for-profit corporation, et al,

Defendants

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FILED

JUL 9 1957

JOSEPH KEIG, SR.
10 S. La Salle Street
Chicago 3, Illinois
Central 6-2222

AT 1:43 O'CLOCK P.M.
ROY H. JOHNSON

Rel 15 H. CLERK

Not Related

JUDGE SULLIVAN
CIVIL CALENDAR