

FILED

OCT 20 1958

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

O'CLOCK
ROY H. JOHNSON

RADIANT BURNERS, INC., a corporation,

Plaintiff

-vs-

AMERICAN GAS ASSOCIATION, INC., a membership corporation under the laws of New York; THE PEOPLES GAS, LIGHT & COKE COMPANY, an Illinois corporation; NORTHERN ILLINOIS GAS COMPANY, an Illinois corporation; AUTOGAS COMPANY, a corporation; CROWN STOVE WORKS, a corporation; FLORENCE STOVE COMPANY, a corporation; GAS APPLIANCE SERVICE, INC., a corporation; NORGE SALES CORPORATION, a corporation; SELLERS ENGINEERING COMPANY, a corporation; NATURAL GAS PIPELINE OF AMERICA, a corporation; TEXAS-ILLINOIS NATURAL GAS CO., a corporation,

Defendants

No. 57 C 1167

xy caption = 57-c-1167) 1-4

Pursuant to leave of Court first had and obtained, plaintiff files this Second Amended Complaint.

SECOND AMENDED COMPLAINT) *cap*

alc RADIANT BURNERS, INC. by its attorneys, Joseph Keig, Sr., John O'C. Fitzgerald, Victor Neumark and Charles F. Marino, complains of the defendants named in Paragraph 5 hereof, and alleges:

alc 1. JURISDICTION: Jurisdiction of this Court is invoked pursuant to USC Title 15, Sections 15, 22 and 26.

etc
2. JURISDICTION OVER AMERICAN GAS ASSOCIATION, INC.:

The defendant, American Gas Association, Inc., (herein 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. This Court has jurisdiction over AGA under USC Title 15, Section 22.

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3. PLAINTIFF: The plaintiff, Radiant Burners, Inc., is an Illinois corporation in the business of manufacturing, selling and distributing gas conversion burners and gas furnaces, (herein called "Radiant Burner") for space heating of homes, commercial and industrial places of business. The plaintiff assembles and manufactures the Radiant Burner in Lombard, Illinois.

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etc
4. MEMBERS OF THE COMBINATION AND CONSPIRACY: The defendant, AGA, is a corporation organized under and pursuant to the Membership Corporation Law of the State of New York. It is the defendant, AGA, around which the illegal conspiracy and combination herein alleged revolves. It consists of a combination of members as follows: (a) practically all, if not all, of the public utility corporations or companies, including the defendants, The Peoples Gas, Light & Coke Company and Northern Illinois Gas Company, (herein called "Utilities") which have franchised

monopolies in the various States of the United States to furnish gas to the public; (b) hundreds of manufacturers who manufacture machinery, equipment and devices used or useful in the collection, transmission and distribution of gas (herein called "Manufacturers"); (c) pipeline companies which transmit bulk natural gas from the places of origin thereof to Utilities and large industrial users of gas (herein called "Pipelines"); (d) thousands of individuals who carry out the purposes of AGA as herein described; and other legal entities.

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5. DEFENDANTS: The defendants in this Second Amended Complaint are as follows:

A. AGA.

B. Utilities: THE PEOPLES GAS, LIGHT & COKE COMPANY, an Illinois corporation (herein called "Peoples"), and NORTHERN ILLINOIS GAS COMPANY, an Illinois corporation (herein called "Northern").

C. Manufacturers: AUTOGAS COMPANY, a corporation; CROWN STOVE WORKS, a corporation; FLORENCE STOVE COMPANY, a corporation; GAS APPLIANCE SERVICE, INC., a corporation; NORGE SALES CORPORATION, a corporation; SELLERS ENGINEERING COMPANY, a corporation.

D. Pipelines: NATURAL GAS PIPELINE OF AMERICA, a corporation, and TEXAS-ILLINOIS NATURAL GAS CO., a corporation.

All of the above defendants transact business in the Northern District of Illinois, and all of the above Utilities,

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Manufacturers and Pipelines contribute to the program of AGA as herein alleged in acts, influence and money.

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6. THE GAS SPACE HEATING INDUSTRY IN THE UNITED STATES:

The gas industry has grown in the last thirty years until today natural gas is used more extensively for heating space than any other form of fuel. Side by side with the growth of this industry there grew an industry which supplies the mechanisms, devices and equipment necessary to control the collection, transmission, distribution and ignition of gas fuel. In 1957 there was in use in the United States more than two million floor furnaces, more than two and one-half million wall furnaces, more than twenty million space heaters and more than five million conversion units using gas. It is reliably estimated by the defendant, AGA, that between the years 1960 and 1974 over forty-two million space heaters, seventeen million floor and wall furnaces and nineteen million central heating units, including replacements, will be installed in the United States. These gas units are presently in operation in every one of the forty-eight states of the United States. These manufacturers are scattered throughout at least thirty states in the United States.

Presently in the Northern District of Illinois there are over 200,000 prospective users of gas for space heating, which have applied for gas service from the Utilities serving such area, who have been unable to get permission from such Utilities to use gas due to the inadequacies of the supply of gas and the great

demands therefor.

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7. VIOLATIONS CHARGED: The defendants have conspired and combined, and are presently conspiring and combining, with each other, and the other members of AGA not named as defendants herein, in violation of USC Title 15, Section 1, in that they have either formed or joined AGA for the purpose, among others, of controlling the manufacture, sale, use and installation of gas burners, gas heating devices and other gas equipment, in the manner described as follows:

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

B. The defendant gas burner and equipment Manufacturers, some of which are in competition with the plaintiff, along with the defendant Utilities, Peoples and Northern, are, or have been represented on the committee of AGA which decides whether or not given gas burners and

equipment warrant AGA approval.

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C. The Utility defendants, Peoples and Northern, and other Utilities, are legal monopolies in the various communities in which they serve gas, and as such have power to influence, and do influence, prospective purchasers of gas burners and other gas equipment in respect of the gas burners and equipment which are to be installed and used in communities each serves gas.

D. It is not possible to successfully sell, market and distribute gas equipment, including Radiant Burners, manufactured by the plaintiff, which are not approved by AGA, because AGA and its Utility members, including Peoples and Northern, effectuate the plan and purpose of the unlawful combination and conspiracy alleged herein by the following conduct and action:

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(1) By refusing to provide gas for use in the plaintiff's Radiant Burner and other gas heating devices and equipment produced by other manufacturers which are not approved by AGA.

(2) By refusing or withdrawing authorization and certification of dealers in gas burners and equipment who handle or sell the plaintiff's Radiant Burner or other gas heating devices and equipment produced by other manufacturers which are not approved by AGA.

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

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(4) Utilities, which have the first contact with prospective purchasers of gas burners and other gas equipment, discourage these prospective purchasers from purchasing and installing gas equipment, including the plaintiff's Radiant Burner, which are not approved by AGA, and by encouraging such prospective consumers to purchase AGA approved products, and by permitting the gas equipment, mechanisms, devices and products approved by AGA to be exhibited in the public areas of their offices and by refusing to permit gas equipment, mechanisms, devices and products of manufacturers, including the plaintiff, which have not been approved by AGA to be so exhibited.

(5) The defendant, AGA, and the Utilities have used municipalities and other governmental agencies to pass ordinances which require that no gas burner or equipment shall be used within its limits unless such gas burner or equipment bears the seal of approval of AGA.

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E. 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 mechanisms, devices and products not approved by AGA, including the Radiant Burner, is shown by the following statement taken from page 8 of a brochure published by AGA, entitled "What You Should Know About Your Laboratories":

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"THE APPROVAL PLAN - Our Theme Song

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"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." (emphasis added)

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and by speeches, publications and meetings designed to emphasize that all of the members of AGA must work as a unit to exclude from sale and use any gas products not approved by AGA, restraining the trade and commerce of manufacturers who produce gas equipment, including the Radiant Burner, not approved by AGA.

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8. INJURY TO THE PUBLIC: AGA purports to approve only products which are safe, substantial, durable and efficient. Plaintiff has tendered the Radiant Burner to AGA for approval on

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two occasions, and AGA has not approved such Radiant Burner. However, gas burners approved by AGA are not as safe, not as efficient and no more durable than Radiant Burners which AGA has failed to approve as is shown following:

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A. AGA approves gas burners which have a pilot flame constructed and operated in such a manner that explosions frequently occur as is shown below:

(1) The pilot flame on some gas burners which are approved by AGA is composed of two flames--the lighting flame which ignites the gas, and the bimetal or thermocouple flame which controls the valve admitting gas into the combustion chamber. The lighting flame is connected to the thermocouple or bimetal flame by a runner flame. The hole through which the lighting flame flows frequently becomes clogged from carbon because that flame must compete with the main burner for secondary air. Clogging from carbon frequently extinguishes the lighting flame without affecting the bimetal or thermocouple flame. When this occurs, the main burner valve will open, admitting gas into the combustion chamber because the bimetal or thermocouple flame is still on, allowing the valve to open. However, the gas will not be ignited because the lighting flame is out, and so the gas will fill the combustion chamber. The mixture of gas and air

in the combustion chamber being highly volatile will explode when the gas reaches the thermocouple or bimetal flame.

(2) There are various single-flame pilots being brought on the market continually for the purpose of eliminating the above problem. All of these are spread flame which still include the potential of the ignition part of the flame becoming clogged while the thermocouple portion of the flame is still in operation heating the thermocouple and so permitting gas to be admitted into the combustion chamber, which is not immediately ignited by the lighting flame. When the gas fills the combustion chamber sufficiently to reach the thermocouple portion of the flame, explosions occur.

B. AGA approves metallic ports which result in explosions as the following facts show:

AGA approves gas burners in which the ports which emit the gas into the combustion chamber are metal. By reason of the metal becoming corroded and by reason of the droppings from the pilot flame frequently clogging such ports, those ports which lie directly under the pilot flame frequently become corroded or clogged so that no gas can be admitted through them to the ignition flame while the remaining ports in the burner will remain unclogged and so admit gas into the combustion chamber which is not immediately ignited. When the gas filling the combustion

reaches the pilot or thermocouple flame, an explosion occurs.

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The explosions mentioned herein frequently occur and vary in degree from what the gas industry calls a "puff" to a serious explosion causing property damage and personal injury which the gas industry calls a "damaging puff."

C. The Radiant Burner is safe, and an explosion cannot occur in the use of it, as the following explanation shows:

(1) The Radiant Burner consists of a series of ceramic radiants located crosswise and parallel in a metal drawer. It has a pilot located so that the thermocouple flame extends into the direct path of the above eight ports of the first radiant so that the first gas coming through the burner must be ignited by this flame. The thermocouple flame is one and the same with the ignition flame. This flame can be reduced to a mere bead flame which will not allow the main valve to open or hold it open so that gas can be admitted into the combustion chamber. But if the valve is defective and any gas, including a mere seepage, comes through the burner, this minute bead flame is sufficient to immediately ignite such gas safely. Consequently, in the operation of the Radiant Burner there is no possibility for gas to fill the combustion chamber, and it is not possible to have an explosion of any character.

(2) The eight ports on the first radiant mentioned

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above through which the gas is admitted, which is first ignited by the thermocouple flame, are as all the ports in the burner, composed of a durable ceramic material. This ceramic material becomes so hot that carbon or any other foreign material is immediately burned off and cannot clog the ports. Ceramic material cannot corrode. Consequently, it is not possible, as in the case of metallic ports, for the ports of the Radiant Burner directly below the thermocouple flame to be clogged while the remaining ports remain open so that gas can fill the combustion chamber and explode as in the case of those burners approved by AGA. Also, in that ports come out of the radiant at an angle, it is not possible for any foreign substance dropping upon the radiant to clog these ports. In the installation of over 3,000 Radiant Burners manufactured by the plaintiff herein or its predecessors since 1937, no explosion has occurred.

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A. The Radiant Burner consumes less gas per BTU delivered to heat space than any of the burners approved by AGA as the following shows:

In general, those burners approved by AGA release hot gases which are a convected heat and which rise to the top of the

combustion chamber. These hot gases, being convected heat, can only heat the surfaces which they touch, which is only the upper sides and dome of the combustion chamber. AGA approved burners burn gas at approximately 12" above the floor of the combustion chamber.

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The stack temperature of AGA approved gas burners, installed in gas designed furnaces, is approximately 550° F. and in conversion units is higher than 550° F. This stack temperature is indicative of the amount of heat which is escaping up the chimney and, therefore, is lost for space heating, showing the inefficiency of such burners.

Thus, these burners approved by AGA efficiently use a maximum of 50% of the surface area of the combustion chamber.

B. The Radiant Burner is set on the bottom of the combustion chamber and consists of radiants located parallel to one another and crosswise in a metal drawer which is 4" high, 8" wide and 22" long. The flame burning from the ports which are on the sides of the radiants extends across the space between the radiants and burns against the opposite radiant bringing it to an incandescent glow. The radiant rays from these incandescent radiants extend in every direction to the surface of the combustion chamber. Whether the Radiant Burner is installed in a gas designed furnace or as a conversion unit, the stack temperature never reaches 550° F. and is generally between 300° - 350° F. This

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indicates the efficient use of the gas used therein. The Radiant Burner uses the entire surface of the combustion chamber above a level four inches from the bottom, which amounts to approximately 90%. As a result of the efficiency with which the Radiant Burner uses gas, the cost of gas to the consumer to heat an equal amount of space under equal conditions is 50% greater in AGA approved burners than the Radiant Burners.

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The Radiant Burner is as durable as any gas burner approved by AGA and more durable than most gas burners approved by AGA, as the following shows:

All gas burners approved by AGA are metal, which is subject to corrosion due to dampness and acids produced by the combustion of gas.

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The Radiant Burner is made of ceramic radiants which are impervious to moisture and acids and cannot corrode. The ceramic material used in the Radiant Burner is a hard, durable material which can withstand extremes in heat and cold and the rapid change from one to the other, and is particularly designed and manufactured for use in a gas burner. The original burner made by the predecessor of the plaintiff herein, and which was of the same ceramic material as the present Radiant Burner, has been

in continuous use since 1933 without repair or replacement.

Because of the extensiveness and importance of gas space heating to the public of the United States as shown above in Paragraph 6 and because of the facts stated in this paragraph, the public has been greatly injured by the illegal conspiracy and combination herein alleged in that (a) it has been deprived of choosing, purchasing and using gas burners, and other gas equipment not approved by AGA; including Radiant Burners manufactured by the plaintiff; (b) it has been deprived of the purchase and use of the Radiant Burner which is the safest gas burner on the current market; (c) it has been deprived of the purchase and use of Radiant Burner, which is the most economical gas burner in operation; (d) it has been deprived of the right to purchase and use the Radiant Burner which is one of the most durable gas burners on the current market; and (e) in areas where the supply of gas is inadequate to serve all of the public desiring gas for space heating, thousands of the members of the public have been deprived of the use of gas for space heating in that the Radiant Burner uses less gas, and if it were permitted in general use, more space by 40% would be heated by the same amount of gas.

By reason of the facts (a) that the gas burners approved by AGA are dangerous and have caused many explosions, (b) are expensive in themselves, and (c) are expensive in operation

a great body of the public is afraid to convert their heating appliances from other devices which serve other forms of fuel to gas burners or are chary of converting to gas burners by reason of the expense initially involved or the expense of operation of AGA approved burners, and as a result thereof few gas burners are manufactured and sold and the public is thereby deprived of the cheapest form of fuel available to it as a result of the combination and conspiracy herein alleged.

9. INTERSTATE CHARACTER OF THE COMMERCE RESTRAINED: - etc

The combination and conspiracy alleged herein, in violation of USC Title 15, Section 1, is restraining the sale, distribution and use of the Radiant Burner in States of the United States. The Radiant Burner is assembled by the plaintiff in Lombard, Illinois, of component parts, most of which are purchased from producers and manufacturers thereof located in several States of the United States other than the State of Illinois.

These component parts are shipped from these respective places of manufacture located in several States of the United States, other than the State of Illinois, into the State of Illinois. The assembled Radiant Burner is then sold, shipped, distributed and used in several other States of the United States, to which places it is shipped from Lombard, Illinois. In doing this the plaintiff uses the arteries of interstate commerce to bring component parts of Radiant Burners to the State of Illinois

from States other than the State of Illinois, and also uses the arteries of interstate commerce to ship its Radiant Burners from the State of Illinois to States of the United States other than the State of Illinois.

In that the facts alleged in Paragraph 7 above show that approval of a gas burner or gas equipment by the AGA is mandatory for the successful marketing, sale and distribution of such products, and in that the illegal conspiracy and combination alleged herein has resulted in AGA refusing to approve the Radiant Burner, the Radiant Burner has been completely foreclosed from marketing areas within the State of Illinois where the Radiant Burner is assembled, as well as, many marketing areas within States of the United States other than the State of Illinois, in the following particulars, among others:

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A. In the summer of 1957 the distributor of Radiant Burners in Milwaukee, Wisconsin, discontinued the handling and distribution of Radiant Burners which it had distributed continuously since 1952 because the Milwaukee Gas Light Company, a co-conspirator herein, which distributes gas to consumers in that area, refused to provide gas service for the Radiant Burner on the ground that it was not approved by AGA and it violates a city ordinance which provided that no gas burner could be used other than those approved by AGA or equal. Between 1952 and mid-1957, this

distributor distributed over 300 Radiant Burners in the Milwaukee area, all of which were shipped to the distributor in Milwaukee, Wisconsin, by the plaintiff herein, from Lombard, Illinois. When the distributorship was discontinued, all the Radiant Burners in the possession of the distributor in Milwaukee, Wisconsin, were returned by it to the plaintiff in Lombard, Illinois. At present the Radiant Burner is foreclosed from being marketed in the Milwaukee area, and shipments of Radiant Burners from Lombard, Illinois, to Milwaukee, Wisconsin, no longer occur.

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B. In 1952 the plaintiff herein established a sales office in Marion, Indiana, and contracted and established dealers in Marion, Muncie, Anderson and Elwood, Indiana, for the purpose of distributing the Radiant Burner. Several Radiant Burners were sold and installed in homes in this area at this time. One of the co-conspirators Utilities caused the Marion, Indiana, City Building Inspector to issue a warning through the press to prospective users of Radiant Burners and other conversion units that he would not approve the installation of Radiant Burners and other conversion units in homes, on the professed ground that such Radiant Burners and other conversion units were not safe in that they were not approved by AGA. The plaintiff herein was forced to discontinue his sales office at Marion,

Indiana, at a financial loss of several thousand dollars, and the Radiant Burners were foreclosed from that market area in Indiana.

C. Between 1951 and the present the plaintiff had conversations with officials of the following co-conspirator Gas Utility Companies in the places named:

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East Ohio Gas Company, Cleveland, Ohio;
Michigan Consolidated Gas Co., Detroit
Michigan; Wisconsin Public Service Corporation,
Milwaukee, Wisconsin; Portland Gas & Coke Co.,
Portland, Oregon; Washington Natural Gas Co.,
Seattle, Washington;

for the purpose of determining whether or not it could establish distributors and dealers for Radiant Burners in the areas respectively served by these co-conspirators. In these conversations the officials of these co-conspirators informed the plaintiff that plaintiff could not do business in the territories serviced by these co-conspirators without AGA approval of its products, and so the Radiant Burner was foreclosed from the above market areas in States of the United States other than the State of Illinois.

D. Many other distributors and dealers of gas burners in various communities, located in several States of the United States, have refused to handle and sell Radiant Burners because these burners were not approved by AGA, and in many instances the local gas utility company co-conspirators

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had caused dealers of gas equipment to be certified as being competent and trustworthy in the installation of gas equipment, including gas conversion burners and gas furnaces, and such certified dealers and distributors are forbidden by the Utilities from handling or selling any gas equipment except such as are approved by AGA on pain of losing their certification. Thus the Radiant Burner has been foreclosed from the market areas in States of the United States other than the State of Illinois where such distributors and dealers are located.

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10. DAMAGES TO PLAINTIFF: By reason of the aforesaid illegal combination and conspiracy, the plaintiff has been unable to recover substantial sums which it has expended in the development, manufacture, and attempted sale of the Radiant Burner and has suffered the loss of substantial profits from sales of Radiant Burners which it otherwise would have obtained. The plaintiff's said losses are continuing and will continue unless the relief herein requested is granted.

P R A Y E R jcl

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

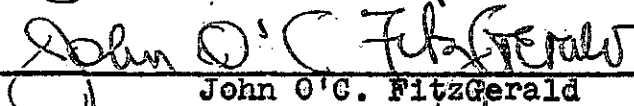
and the costs and expenses incurred in the prosecution of this action.

2. Plaintiff prays that the defendant, AGA, be enjoined from assuming to pass upon the acceptability of gas burners and equipment and be further ordered to notify all AGA members and all distributors and users of gas burners and equipment 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 or hinder the plaintiff from manufacturing, selling and marketing the Radiant Burner.

4. Plaintiff prays for such other and further relief as this Court may deem proper.


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GRACE MURAKAMI

Subscribed and sworn to before me
this 20th day of October, 1958.



NOTARY PUBLIC

General No. 57-C-1167

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

RADIANT BURNERS, INC., a
corporation,

Plaintiff,

-vs-

AMERICAN GAS ASSOCIATION, INC., a
membership corporation under the
laws of New York, et al,

Defendants.

SECOND AMENDED COMPLAINT

JOSEPH KEIG, SR.
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