

Syllabus

IN THE MATTER OF
ALLIED RADIO CORP.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5520. Complaint, Dec. 1, 1947—Decision, Nov. 15, 1949*

Although the functional abbreviations or names and technical trade numbers used in radio advertisements to designate various tubes or other devices may be clearly understood to define function exactly, by those members of the public engaged in the manufacture, assembly, and repair of radio sets, and by those technically trained in electronics, such abbreviations, names and numerals are not so understood by the remainder of the purchasing public, which believes that the numerical tube complement of a radio-receiving set indicates its power, sensitivity, and volume, rather than its refinement, and that the greater the number of tubes in a receiving set, the greater will be its power of detecting, receiving, and amplifying radio signals.

Where a corporation engaged in the interstate sale and distribution of radio sets, radio tubes, component and accessory parts and like products to dealers for resale, and directly to the purchasing public; through statements in catalogs and other literature circulated by mail among 500,000 to 600,000 prospective purchasers annually throughout the United States—

Represented, directly or by implication, that the tubes contained in its receiving sets were necessary and fully functioning tubes, performing the recognized and customary functions of radio receiving-set tubes in the detection, reception, and amplification of radio signals, through such language as "You get full 6-tube efficiency and power with this tube lineup," etc., and "The 5-tube circuit (including rectifier) is licensed * * *. You get full efficiency and power from the following tube lineup," etc., followed by descriptive abbreviations and technical-trade numbers;

The facts being that one of the tubes contained in the sets thus advertised was a "rectifier" tube, which, while serving the auxiliary function of changing alternating current to direct current, without which conversion the commercially sold home radio set will not operate, did not perform the primary function of detecting, receiving, and amplifying radio signals;

With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said sets possessed capacities and qualities which they did not in fact possess, and thereby to induce its purchase of substantial quantities thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

While the complaint in the instant proceeding charged respondent with misrepresenting through its advertisements the prices at which it regularly sold its sets or authorized dealers to sell the same, and the prices at which it sold or authorized its dealers to sell said products as special or reduced, the Commission found such charges not supported by the record.

Complaint

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Before *Mr. Frank Hier*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Hoffman & Davis and *Mr. Ralph J. Gutgsell*, of Chicago, Ill., for respondent.

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 Allied Radio Corp., a corporation, hereinafter referred to as respondent, has 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 Allied Radio Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 833 West Jackson Boulevard, Chicago, Ill. The respondent is now and has been for several years last past engaged in the business of manufacturing and assembling radio-receiving sets, radio tubes, and like products, and in selling and distributing said products to dealers for resale and direct to the purchasing public.

PAR. 2. In the course and conduct of its business, respondent corporation sells and distributes its radio-receiving sets and products to dealers for resale and to members of the purchasing public throughout the United States and in the District of Columbia. Respondent now causes and for several years last past has caused its said products when sold either to dealers for resale or direct to the purchasing public to be transported from its principal place of business in Chicago, Ill., to purchasers thereof at their several points of location in the various States of the United States other than the State of Illinois and in the District of Columbia.

There is now and at all times mentioned herein has been a course of trade in said products so sold and distributed by said respondent between and among the several States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of the business as set out and described in paragraphs 1 and 2 hereof, for the purpose of inducing the purchase of respondent's radio-receiving sets, radio tubes, and like products offered for sale and sold by it, the respondent has circulated, and has caused dealers in its products to circulate, among

prospective purchasers through the United States, by mail, advertisements in newspapers and magazines, by means of advertising folders, price lists, pamphlets, circulars, letters, and other literature by radio continuities and otherwise, many statements and representations concerning its said radio-receiving sets. By said means respondent has made, and has caused dealers to make, false and misleading statements and representations in describing said radio-receiving sets, their power and capacity for reception, the number of active functioning tubes in said radio sets, and the prices of said sets. Among such statements and representations so made and circulated by respondent, and by its dealers under its direction, are the following:

You get full 6 tube efficiency and power with this tube lineup. 12SA7GT as Conv.; 12SK7GT as IF Amp; 12SK7GT as RF Amp; 12SQ7GT as Det.-Audio Amp (Dual purpose); 50 L6GT as power output. Selenium rectifier for maximum output. * * * Net Price Each \$21.95. Your price, lots of 3 each \$20.85.

The 5 tube circuit (including rectifier) is licensed by RCA and Hazeltine, and that means the latest 1947 improvements from these engineering laboratories. You get full efficiency and power from the following tube lineup. 12SA7GT as Conv.; 12SQ7GT as Det.; 12SF7GT as IF Amp; 50L6GT as power output; 35Z5GT Rect. * * * Net Price each \$15.85. Your price lots of 3 each \$14.95.

You get exceptional sensitivity and power output from this remarkably efficient circuit which uses the latest type tubes as follows: 12SG7 as RF Amp; 12SA7GT as Osc.-Conv. (Dual Purpose); 12SK7GT as IF Amp; 12 SQ 7 GT as Det.-AVC—first audio (triple purpose); 35L6GT as beam power output; 35Z5GT Rectifier. Note the multiple-purpose tubes—they make a difference you'll appreciate in the remarkable power delivered by this receiver. * * * Net price each \$33.95. Net price lots of 3 each \$33.45.

Three-way operation Knight 6 (with rectifier) * * * Net each less batteries \$35.75. Net lots of 3 each \$33.25.

Extra sensitivity—The powerful RCA and Hazeltine license circuit uses the latest low drain tubes as follows: 1N5GT as RF; 1A7GT as Osc.-Conv. (dual purpose); 1N5GT as IF; 1H5GT as Det.-AVC—first audio (triple purpose); 1Q5GT as beam power output; 117Z6GT Rect. * * * Net less batteries \$35.75. Net lots of 3 each \$33.25.

The aforesaid statements and representations, together with similar statements and representations not herein set out, purport to be descriptive of respondent's radio receiving sets, the necessary number of functioning tubes with which they are equipped, and the prices thereof, and constitute representations on the part of respondent to members of the purchasing public and to dealers that said radio-receiving sets are equipped, some with five, some with six, and some with various other designated numbers of active, fully functioning tubes; that the prices represented as "net prices" are the prices at which respondent

regularly sells its said radio-receiving sets or at which it authorizes dealers to sell such products; and that the prices represented as "your price lots of 3 each" and as "net lots of three each" are special or reduced prices at which respondent sells its said radio-receiving sets or at which it authorizes dealers to sell such products.

A substantial number of the purchasing public believe that the greater the number of actually fully functioning tubes in the radio-receiving set, the better the performance and the greater its power for detecting, amplifying, and receiving sound waves, and a substantial number of the purchasing public buy respondent's said radio-receiving sets under such belief.

PAR. 4. In truth and in fact, the foregoing statements and representations made by the respondent are false, deceptive, and misleading. Respondent's aforesaid radio-receiving sets are not equipped with five, six, or other number of tubes respectively as represented by respondent, but have installed therein one or two or more ballast, nonfunctioning or tuning beacon tubes, or rectifier tubes. Such ballast or tuning beacon tubes or rectifier tubes, devices, and accessories do not serve as detecting, amplifying, or oscillating tubes and do not perform any recognized and customary function of radio tubes in the detection, amplification, and reception of radio signals. Respondent's so-called "net prices" are fictitious prices and are not the prices at which respondent regularly sells its said radio receiving sets or at which respondent authorizes dealers to sell such products, and the prices represented by respondent as "your price lots of 3 each" and as "net lots of three each" are not special or reduced prices but are the prices at which respondent sells its said radio-receiving sets or at which it authorizes dealers to sell such products in the usual and regular course of business.

PAR. 5. Each and all of the foregoing false and misleading statements and representations made by respondent describing its said radio-receiving sets and the number of tubes contained therein, and the prices thereof, as hereinabove set out, were and are calculated to, and have had and now have, the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true. As a result of such erroneous and mistaken beliefs so induced, a substantial number of the purchasing public have purchased a substantial volume of respondent's radio-receiving sets.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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assembly and repair of radio sets and by those technically trained in electronics, such abbreviations, names, and numerals are not so understood by the remainder of the purchasing public. The latter believes that the numerical tube complement of a radio-receiving set indicates its power, sensitivity and volume, rather than its refinement.

PAR. 7. The representations made by respondent with respect to the tube complement of its radio-receiving sets, as set forth herein, are erroneous and misleading, and their use by respondent has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such sets possess capacities, qualities, and characteristics which they do not in fact possess, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of respondent's radio-receiving sets as a result of such erroneous belief.

PAR. 8. While the complaint contained certain charges in addition to that discussed above, the Commission finds that such charges are not supported by the record.

CONCLUSION

The acts and practices of respondent as herein found are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and oral argument, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent, Allied Radio Corp., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of respondent's radio-receiving sets in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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Representing, directly or by implication, that any radio-receiving set contains a designated number of tubes or is of a designated tube capacity, when one or more of the tubes referred to are tubes or other devices which did not perform the recognized and customary functions of radio-receiving-set tubes in the detection, amplification, and reception of radio signals.

It is further ordered, That respondent shall, within 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.

Syllabus

IN THE MATTER OF

THE WORLD SYNDICATE PUBLISHING CO., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 4634. Complaint, Nov. 14, 1941—Decision, Nov. 22, 1949

The word "Webster's," as respects dictionaries, simply means to the public, according to the greater weight of the evidence in the instant proceeding, a dictionary, and not any particular dictionary, nor the dictionary of a particular publishing company, although it does connote, according to scholars, that a dictionary in connection with which it is used, is a literary lineal descendant of the original Webster Dictionary written by Noah Webster, and was prepared according to principles employed by him in the preparation of his dictionaries; and certain segments of the public also understand and believe, it appears, that a dictionary bearing the name "Webster," by whomsoever published, is an accurate and up-to-date one.

While executors of the estate of Noah Webster, as respects the right to the use of the name "Webster" or "Webster's," by agreement of November 5, 1844, did transfer and assign to George and Charles Merriam all of the rights which said executors had to publish "The American Dictionary in two volumes, Royal Octavo entered for copyright in September 1840," and it appears that in 1853 and 1854 other agreements granted to the Merriams the right to renew the copyright of the same American Dictionary, to publish revisions and abbreviations thereof, and to publish Webster's School Dictionary, it did not appear that the Merriams were granted the exclusive right to publish "Webster's Dictionary," or that they ever purchased the trade name "Webster's Dictionary," or that they—or anyone else—ever acquired any rights of any description in the dictionaries produced by Noah Webster in 1806, 1807, and 1828; and as a matter of fact millions of copies of dictionaries bearing the name Webster as a principal part of their titles, were published by various publishers in the United States prior to 1904, one firm alone thus publishing more than a million dictionaries thus entitled, without any arrangement or contract with the Merriams; and there are now and have been since, a great many publishers, beside said company, who publish and sell dictionaries thus entitled.

Where a corporation and its successor, publishers, and sellers since 1928 of dictionaries, the title pages, covers, bindings, and jackets of which were frequently changed without substantially changing the vocabularies, and the approximately 25 different titles of which, both current and discontinued, included the name "Webster" or "Webster's"; a third concern, which held all the outstanding stock of the other two, made the dictionaries sold by them, and owned the plant in which said products were made; and two individuals, who as president and vice president, controlled and managed said concerns; engaged in the interstate sale and distribution of said products in competition with the G. & C. Merriam Co., and other concerns—

- (a) Represented to the purchasing public that the dictionaries in question were compiled or published by Noah Webster or his successor, through such statements on the title pages, covers, and paper jackets of their products as "WEBSTER'S UNIVERSAL DICTIONARIES * * *" "BEING THE UNABRIDGED DICTIONARY by Noah Webster, LL. D., edited," etc.;

The facts being that while their said dictionaries were based upon and derived from a dictionary originally compiled by Noah Webster, published in 1828, and entitled "An American Dictionary of the English Language," they were not actually written or published by either Noah Webster or his successors;

- (b) Represented, as aforesaid, that their said dictionaries had been edited or revised, enlarged and brought up to date by a staff of eminent scholars and educators, including some whose names were listed on the title pages of certain of said volumes;

The facts being that the individuals employed by them to edit and revise their dictionaries had not been generally recognized as outstanding scholars or specialists in philology or lexicography, and that some of those whose names appeared on the title pages or covers had never even been in their employ;

- (c) Represented that each of their dictionaries was substantially different from the others published by them and had been separately edited, and constituted a new dictionary as of the date of its publication, through such statements on their title pages, covers, bindings, and jackets as "newly revised," etc., "now thoroughly revised and greatly enlarged and improved," "a new work throughout," * * * as its title implies is new, right up-to-date, equipped with the latest words and language," * * *;

When in fact different editions or issues of said products were made from the same plates as other dictionaries theretofore published and sold by them under different titles and jackets;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations were true, and thereby into the purchase of their said dictionaries; whereby substantial trade was diverted unfairly to them from their competitors in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and of their competitors, and constituted unfair methods of competition in commerce, and unfair and deceptive acts and practices therein.

As respects the allegations of the complaint in said proceeding, that since 1847 the G. & C. Merriam Co. and its predecessors, George and Charles Merriam, had been engaged in publishing and selling dictionaries under trade names which included the word "Webster" or "Webster's," had long been associated by the public with the dictionaries thus published, and that the public now understands "Webster's Dictionaries" to be those published by that firm; and the charge that through the use of the name "Webster" or "Webster's" in the titles of their dictionary and elsewhere, the respondents represented that their dictionaries were those published by said company or the predecessors thereof; the excellence of which was generally recognized;

The Commission was of the opinion that the record did not show that the use by respondents of the name "Webster" or "Webster's" in the titles of their dictionaries and in advertisements with respect thereto was deceptive or misleading; and that the charge of the complaint as respects such misuse of the name had not been sustained by the weight of the evidence.

Complaint

With regard to the charge that respondents falsely represented the prices at which their dictionaries were offered for sale and sold as reduced or special prices, much less than the usual selling price of said dictionaries, the record failed to sustain the same.

Before *Mr. Andrew B. Duvall* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Merle P. Lyon and *Mr. John M. Russell* for the Commission.

Wittenberg, Carrington & Farnsworth, of New York City, for respondents.

Mr. Gilbert H. Montague, of New York City, for G. & C. Merriam Co., *amicus curiae*.

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 The World Syndicate Publishing Co., a corporation, The World Publishing Co., a corporation, The Commercial Bookbinding Co., a corporation, and Alfred Cahen, J. L. Russell, and Ben D. Zevin, individuals, 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. Respondents, The World Syndicate Publishing Co., The World Publishing Co., and The Commercial Bookbinding Co., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and respondents, Alfred Cahen, J. L. Russell, and Ben D. Zevin, individuals, are president, vice president, and secretary, respectively, of each of said corporations. The individual respondents have dominant control of the advertising policies and business activities of said corporate respondents and all of said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter alleged. Respondent's principal office and place of business is at 2231 West One Hundred and Tenth Street, Cleveland, Ohio. Respondents maintain sales offices in New York, N. Y.; Chicago, Ill.; Los Angeles, Calif.; and Toronto, Ontario, Canada.

PAR. 2. Respondents are now and have been for more than 2 years last past engaged in the publication and sale of dictionaries. Respondents cause their said dictionaries, when sold, to be shipped from their aforesaid places of business to the purchasers thereof located in States

other than those from which such shipments are made, and in the District of Columbia.

Respondents maintain and at all times mentioned herein have maintained a course of trade in their said dictionaries in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are now and have been for several years last past in competition with corporations, firms, and individuals engaged in the sale and distribution of dictionaries in commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not use the word "Webster" in connection with the sale of said dictionaries in such a manner as to deceive the public and who do not engage in any unfair or deceptive acts or practices in connection with the sale of their products in said commerce.

PAR. 4. In 1828, Noah Webster, who has long been recognized by the public as a master of lexicography, published the first unabridged dictionary under the title "American Dictionary of the English Language." This dictionary later became commonly known as Webster's Dictionary. Following the death of the said Noah Webster in 1843, George and Charles Merriam acquired all of the publisher's right, title, and interest in said dictionary, including the trade name Webster's Dictionary, which right, title, and interest they duly assigned to the G. & C. Merriam Co., a corporation, incorporated in 1892 under the laws of the Commonwealth of Massachusetts. Since 1847, the aforesaid individuals and said corporation have revised and published from time to time various editions of dictionaries which they have sold throughout the United States of America and in all of the English-speaking countries under trade names which include the word "Webster's." Although the exclusive right of said G. & C. Merriam Co. to the use of the name "Webster's" in connection with said dictionaries, which was secured by copyright, expired in 1889, the G. & C. Merriam Co. was the only publisher of a dictionary known as "Webster" or "Webster's" until 1904.

Due to the preeminence of the original publisher of Webster's Dictionary as a lexicographer and to the completeness, comprehensiveness, and accuracy of the Webster dictionaries published by Noah Webster and his successors, George and Charles Merriam, and their successor, said G. & C. Merriam Co., a corporation, and the exclusive usage of the word "Webster" by these publishers from 1828 to 1904, the word "Webster" or "Webster's" has long been associated by the

public with the dictionaries published by Noah Webster and his successors. The public understands Webster's dictionaries to be those published by said G. & C. Merriam Com. or its predecessors. The public understands an unabridged Webster's dictionary to be a complete, comprehensive, and accurate compendium of all the words in the English language, including new words, and abridged Webster's dictionaries to be accurate and up-to-date.

The "Webster's" dictionaries published by the G. & C. Merriam Co. and by their predecessors have acquired a wide and favorable reputation and good will which is of great monetary value to their publishers, due to the fact that the word "Webster" has been long associated with publications having the excellence of the dictionaries of the G. & C. Merriam Co. and its predecessors.

PAR. 5. In the course of their said business, in connection with the promotion of the sale of their said dictionaries in said commerce, respondents directly and indirectly simulate and imitate the advertisements of said G. & C. Merriam Co. and the titles of its said dictionaries, and respondents have made and are now making representations concerning the origin and authorship of their said dictionaries so as to confuse and deceive purchasers and prospective purchasers thereof and cause them to believe that respondents' said dictionaries are the Webster's dictionaries of the said G. & C. Merriam Co. and its predecessors, and that the respondents' unabridged dictionaries are complete, comprehensive, and accurate compendiums of all the words in the English language, including new words, and that respondents' abridged dictionaries are accurate and up-to-date. Respondents create said confusion and deception of the purchasing public through the use of advertisements featuring the name "Webster" or "Webster's," and through the use of the name "Webster" or "Webster's" in titles for said dictionaries, and through statements and implications as to the quality and completeness of their dictionaries and their value made on the front covers, bindings or title pages, on cover jackets therefor, on the cartons in which they are placed, in circular price lists, in newspaper and other published advertisements and in advertising literature distributed among the purchasing public throughout the various States of the United States and in the District of Columbia. Among and typical of the trade names used for said dictionaries and the representations made and used, as hereinabove alleged, are the following:

- The New Supreme Webster Dictionaries.
- Webster's New Age Dictionary.
- The New Universities Webster Dictionary.

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New Home, Office, and School Webster Dictionary with Atlas of the World.

The Ideal Pocket Webster's Dictionary.

Webster's Qualified Dictionary.

Webster's Criterion Dictionary for Home, School and Office with Atlas of the World.

Webster's New World Dictionary * * * 1936.

The Royal Webster Dictionary.

Webster New School and Office Dictionary.

New Peerless Webster Home, School and office Dictionary.

Webster's New World Dictionary.

Webster's New Standard Dictionary * * * 1939. A New Compilation * * * \$1.00 * * * A Dollar Dictionary That Has Everything.

Webster's Popular Illustrated Dictionary.

Webster's Twentieth Century Dictionary of the English Language and Complete Atlas of the World, Being the Unabridged Dictionary by Noah Webster, LL. D., * * * Now Thoroughly Revised and Greatly Enlarged and Improved by 100 educators, specialists and eminent scholars under the editorial supervision of Thomas H. Russell, LL. B., LL. D., A. M.; A. C. Bean, M. E., LL. B.; and L. B. Vaughn, Ph. B., * * * prepared for publication by George W. Ogilvie * * *.

"Webster's Universal Unabridged Dictionary" Webster's Universal Dictionary of the English Language with a comprehensive Addenda of Newest Words Compiled by Joseph Devlin, M. A. * * * Being the Unabridged Dictionary by Noah Webster, LL. D. Edited under the supervision of Thomas H. Russell, LL. D.; A. C. Bean, M. E. L. E. B.; and L. B. Vaughn, Ph. B. and a staff of eminent scholars, educators, and specialists.

Including all the newest words in the English Language.

Authentic, Unabridged and Up-to-Date. The Mighty English Language Complete in every word and phrase.

The most complete and most practical unabridged dictionary yet published, the well known and justly famous Webster's Twentieth Century Dictionary * * *.

It's Yours ALMOST for the ASKING! * * * A WORLD-FAMOUS WORK.

In some instances, respondents' advertisements and the title pages of their said dictionaries contain this statement: "This dictionary is not published by the original publishers of Webster's Dictionary or by their successors," which is printed in relatively inconspicuous type and

frequently at some distance from the trade name in which appears the word "Webster" or "Webster's." In many instances, no such statement appears in respondents' said advertising literature or on the title page or elsewhere on or in said dictionaries.

PAR. 6. Through the use of the aforesaid titles, statements and representations, and others similar thereto not specifically set out herein, respondents represent directly and by implication that their said dictionaries are publications originally compiled and published by Noah Webster, later revised and published by his successors, George and Charles Merriam, or by their successor, the G. & C. Merriam Co., which have been recently revised and edited by the said G. & C. Merriam Co.; that they are the Webster's dictionaries which are generally recognized by the purchasing public as the standard dictionary of the English language; that respondents' unabridged dictionaries are complete, comprehensive, and accurate compendiums of all the words in the English language, including new words, and that respondents' abridged dictionaries are accurate and up-to-date; that said Webster's Twentieth Century Dictionary is the unabridged dictionary published by Noah Webster, thoroughly revised, greatly enlarged, improved and brought up-to-date by the successor to the publisher of the original Webster's Dictionary; that respondents' Webster's Universal Unabridged Dictionary is a complete dictionary, is edited by the successor to the publishers of the original Webster dictionaries, that it has been revised to date by eminent scholars, educators and specialists, and contains all of the newest words. Respondents represent and imply that each of their afore-mentioned dictionaries is substantially different from the others and has been separately edited, that the prices at which said dictionaries are offered for sale and sold are reduced or special prices much less than the usual selling price of said dictionaries; that respondents' "Webster's New Standard Dictionary" was a new compilation when it was published in 1939.

PAR. 7. In truth and in fact, said dictionaries are not publications originally compiled and published by Noah Webster, later revised and published by his successors, George and Charles Merriam, or by their successor, the G. & C. Merriam Co. Said dictionaries have never been revised or edited by the said G. & C. Merriam Co., nor are they the Webster's dictionaries which are generally recognized by the purchasing public as the standard dictionary of the English language. Respondents' said Webster's Twentieth Century Dictionary is not the unabridged dictionary originally published by Noah Webster, thoroughly revised, greatly enlarged, improved and brought up-to-date by the successors to the publisher of the original Webster Dictionary.

Respondents' said Webster's Universal Unabridged Dictionary is not a complete dictionary, it is not edited by the successors to the publisher of the original Webster's dictionaries, it has not been revised to date by eminent scholars, educators, and specialists and does not contain all of the newest words. Each of respondents' said dictionaries has not been separately edited and is not substantially different from others of said dictionaries which respondents represent to have been separately revised and edited. In many instances dictionaries represented as being separately revised and edited are substantially the same as both former and current publications of respondents. The prices at which respondents offer for sale and sell their said dictionaries are not reduced or special prices less than the usual selling price of said dictionaries, but are the prices at which respondents regularly and customarily offer for sale and sell said dictionaries. Respondents' Webster's New Standard Dictionary was not and is not a new compilation. None of the respondents' said dictionaries are as complete, comprehensive, and accurate as the dictionaries published by Noah Webster and his successors. Respondents' "unabridged" dictionaries are not complete, comprehensive, and accurate compendiums of all the words in the English language, including new words, and respondents' "abridged" dictionaries are not accurate and up-to-date as represented.

PAR. 8. The use by the respondents of the name "Webster" or "Webster's" in the titles of their said dictionaries and in advertisements with respect thereto is deceptive and misleading, and causes many members of the purchasing public, including school superintendents, teachers, librarians, and publishers, erroneously and mistakenly to believe that respondents' said dictionaries are the publications of said G. & C. Merriam Co. or its predecessors, and that respondents' said dictionaries are the Webster's dictionaries which are generally recognized by the purchasing public as the standard dictionary of the English language, and that respondents' "unabridged" dictionaries are complete, comprehensive, and accurate compendiums of all the words in the English language, including new words.

PAR. 9. The use by the respondents of the aforesaid acts, practices, and methods in connection with the offering for sale and sale of said dictionaries in said commerce has the tendency and capacity to, and does, deceive and mislead members of the public and causes them erroneously to believe that the aforesaid representations and implications are true, and gives respondents' said dictionaries a prestige which they do not merit and would not enjoy but for said acts, practices and methods, and, as a result, many members of the public purchase respondents' said dictionaries under the belief that they are purchasing

the Webster's dictionary published by said G. & C. Merriam Co., thereby unfairly diverting trade to the respondents from their competitors in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 10. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 14, 1941, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondents' joint answer to the complaint, testimony, and other evidence in support of and in opposition to the allegations of said complaint were introduced before Andrew B. Duvall, a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer thereto, testimony, and other evidence, the trial examiner's recommended decision, and written briefs of counsel for the respondents, counsel in support of the complaint, and counsel for G. & C. Merriam Co., as amicus curiae (oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, The World Syndicate Publishing Co., The World Publishing Co., and The Commercial Bookbinding Co., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Ohio. Said respondents have their principal office and place of business at 2231 West One

Hundred and Tenth Street, in the city of Cleveland, State of Ohio, and they maintain sales offices in New York, N. Y., and Chicago, Ill.

The respondents, Alfred Cahen and Ben D. Zevin, are individuals having dominant control over and management of the corporate respondents, and they are, respectively, president and vice president of The World Publishing Co. and of The Commercial Bookbinding Co. Respondent Alfred Cahen is also president of The World Syndicate Publishing Co., which company, however, is now inactive, having been succeeded in 1939 by The World Publishing Co. Respondent J. L. Russell is vice president of The World Syndicate Publishing Co., and he was formerly vice president of the successor corporation, The World Publishing Co. This respondent, however, is no longer an officer of the latter corporation, and he now has nothing to do with the control or management of either The World Publishing Co. or The Commercial Bookbinding Co.

PAR. 2. The respondent, The World Syndicate Publishing Co., from 1928 to 1939 was, and the respondent, The World Publishing Co., since 1939 has been and now is, engaged in the business of publishing and selling dictionaries. Said dictionaries are manufactured by the respondent, The Commercial Bookbinding Co., which company is the parent corporation of the other two corporate respondents and the holder of all of the outstanding capital stock of both The World Syndicate Publishing Co. and The World Publishing Co. The Commercial Bookbinding Co. also owns the plant in which the dictionaries published and sold by The World Publishing Co. are made.

The respondents cause their dictionaries, when sold, to be shipped from their place of business in Cleveland, Ohio, to the purchasers thereof located in various States of the United States other than the State of Ohio and in the District of Columbia. The respondents maintain, and at all times mentioned herein they have maintained, a constant course of trade in their dictionaries in commerce among and between the various States of the United States and in the District of Columbia. The respondent, The World Publishing Co., advertises itself as one of the largest book publishers in America.

PAR. 3. In the course and conduct of their business, as aforesaid, the respondents are now, and at all times since they have been in business they have been, in competition with other corporations and with firms and other individuals also engaged in the publication and in the manufacture and sale of dictionaries. One of such competitors is the G. & C. Merriam Co., a Massachusetts corporation, with its principal office and place of business located in Springfield, Mass.

PAR. 4. Since 1928, the respondents have published and sold dictionaries bearing approximately 25 different titles. In all of said titles the respondents have included as a principal part thereof the name "Webster" or "Webster's." At the time of the hearing in this proceeding the dictionaries published by the respondents were the following:

- Webster's Universities Dictionary Unabridged (Comm. Ex. 42-B).
- Webster's Twentieth-Century Dictionary Unabridged (Comm. Ex. 43-B).
- Webster's Practical Illustrated Dictionary (Comm. Ex. 39).
- New Peerless Webster Home, School and Office Dictionary (Comm. Ex. 19).
- Little Giant Webster Dictionary (Comm. Ex. 51).
- Webster's Giant Illustrated Dictionary (Comm. Ex. 53-B).
- Webster's Tower Dictionary and Atlas (Comm. Ex. 30-B).
- Webster's New School and Office Dictionary (Comm. Ex. 33-B).
- Webster's New Standard Dictionary (Comm. Ex. 29-B).
- Webster's Approved Dictionary (Comm. Ex. 52-B).
- New Handy Webster Dictionary (Comm. Ex. 40).

Included among those formerly published by the respondents, the publication and sale of which had been discontinued from 2 to 6 years prior to the hearing, were the following:

- The Ideal Pocket Webster Dictionary (Comm. Ex. 41).
- New Age Webster Dictionary (Comm. Ex. 20-B).
- Webster's Popular Illustrated Dictionary (Comm. Ex. 28).
- The Royal Dictionary (Comm. Ex. 21).
- Webster's Criterion Dictionary for Home, School, and Office with Atlas of the World (Comm. Ex. 22).
- Webster's New World Dictionary and Atlas (Comm. Ex. 35-B).
- The New Universities Webster Dictionary (Comm. Ex. 37).
- Webster's Universal Unabridged Dictionary and Atlas of the World (Comm. Exs. 23-A and B).
- Webster's Universal Unabridged Dictionary (Comm. Exs. 77A and B).
- The Modern Webster Dictionary with Atlas of the World (Comm. Ex. 36).
- Webster's Qualified Dictionary (Comm. Ex. 38).
- New Home Office and School Webster Dictionary (Comm. Ex. 31-B).
- Webster's Quiz Kids Dictionary (Comm. Ex. 34-B).

The record discloses that the respondents themselves do practically no advertising to the general public. It appears, however, that on the

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title pages, covers, and paper jackets of their dictionaries the respondents have made a number of statements and representations, typical of which have been and are the following:

On the title page of the Webster's Criterion Dictionary for Home, School and Office with Atlas of the World, the statement:

Edited by
JOSEPH DEVLIN, M. A.
* * * * *

Assisted by a Corps of Recognized Authorities
In Philosophy and Lexicography (Comm. Ex. 22)

On the title page of the Webster's Universal Unabridged Dictionary, the statement:

WEBSTER'S
UNIVERSAL
DICTIONARY
of the English Language
with
A Comprehensive Addendum of Newest Words
Compiled by Joseph Devlin, M. A.
Profusely Illustrated
BEING THE UNABRIDGED DICTIONARY
by

NOAH WEBSTER, LL. D.

Edited under the supervision of
Thomas H. Russell, LL. D.; A. C. Bean, M. E., LL. B.; and
L. B. Vaughan, Ph. B. and a staff of eminent
scholars, educators, and specialists

Comm. Exs. 23-A&B; 77-A&B)

On the title page of the "New Home, Office and School Webster Dictionary" and of "The New Universities Webster Dictionary," the following statement:

"IT IS A NEW BOOK
Based on the Original Foundation
of Noah Webster
* * * * *

Edited by
JOSEPH DEVLIN, M. A.
* * * * *

Assisted by a Corps of Recognized Authorities in Philology
and Lexicography

This Dictionary contains an enlarged
vocabulary—modern, accurate—authoritative"

(Comm. Exs. 31-B and 37)

On the title page of the "Webster's Universities Dictionary Unabridged," the following statement:

"WEBSTER'S
 UNIVERSITIES
 DICTIONARY
 of the English Language
 Being the Unabridged Dictionary by
 NOAH WEBSTER, LL. D.
 * * * * *
 Edited under the supervision of
 Thomas H. Russell, LL. D.; A. C. Bean, M. E., LL. B.; and
 L. B. Vaughan, Ph. B.
 Newly Revised
 Under the direction of Joseph Devlin, Elsie Wright,
 Joseph McCarter and a staff of eminent scholars,
 educators, and office editors"

(Comm. Ex. 42-B)

On the paper jacket of the Webster's Approved Dictionary, the statement:

More than 60,000 words covering the widest possible range of information, defined in concise and understandable terms.

A modern compilation in every respect which meets every requirement of modern practice and modern scholarship.

Up-to-the-minute—for it includes the very latest additions to the language from all sources, words which have sprung up from the developments in arts, sciences, and world politics (Comm. Ex. 52-A).

On the title page of Webster's Twentieth-Century Dictionary Unabridged, the following statement:

WEBSTER'S
 TWENTIETH-CENTURY DICTIONARY
 of the English Language
 And Complete Atlas of the World
 Being the Unabridged Dictionary
 by
 NOAH WEBSTER, LL. D.
 * * * * *
 Now Thoroughly Revised and Greatly Enlarged and Improved
 by over one hundred educators, specialists and eminent
 scholars under the editorial supervision of
 Thomas H. Russell, LL. B., LL. D., A. M., A. C. Bean, M. E., LL. B.,
 and L. B. Vaughan, Ph. B.
 * * * * *

Prepared for Publication by George W. Ogilvie
(Comm. Ex. 43-B)

PAR. 5. Through the use of the aforesaid statements and representations, and others similar thereto, the respondents have represented and still represent to the purchasing public that the dictionaries referred to were compiled or published by Noah Webster or his successors; that said dictionaries have been edited or revised, enlarged and brought up to date by a staff of eminent scholars and educators, some of whose names are listed on the title pages of certain of said dictionaries; and that each of their dictionaries is substantially different from the others published by the respondents and has been separately edited and constitutes a new dictionary as of the date of its publication.

PAR. 6. (a) The record in this proceeding shows that the respondents' dictionaries are in fact based upon and were derived from a dictionary originally compiled by Noah Webster, published in 1828, and entitled "An American Dictionary of the English Language." It is not true, however, as the respondents' statements imply, that their dictionaries were actually written or published by either Noah Webster or his successors. The respondents' representations to the effect that their dictionaries were so written or published were and are erroneous and misleading.

(b) The individual respondents testified that each time one of their dictionaries is reprinted and published it is first revised by the respondents' editorial staff. This editorial staff, according to the testimony of the respondent Zevin, at times, has consisted of as many as 12 to 15 people who worked on the editing and revising of the dictionaries. Some of these people have been college students, however, and none of them have had outstanding reputations as scholars or dictionary experts. Respondent Zevin testified further that in 1941 his wife, Mrs. Lillian C. Zevin, was designated as editor-in-chief of the respondents' publications, although he admitted that her work was chiefly administrative and not scholarly. For a number of years one Dr. Joseph Devlin was the respondents' consulting editor-in-chief, actually in charge of the technical phases of the work on the respondents' dictionaries, but during the last year or more prior to the hearing he had been too ill to work and his place had been taken by Dr. Harold Whitehall, a professor at the University of Indiana.

A number of the witnesses, including several prominent educators, were shown a list of the names of the respondents' editorial staff, and were asked whether they knew of any of said educators as men having outstanding qualifications or reputations as philologists or lexicographers. One of said witnesses knew Dr. Whitehall as an historian of the language, but he was not in a position to pass on Dr. Whitehall's

competency as a lexicographer or consulting editor for a dictionary. The other witnesses were not acquainted with the professional standing or competency of any of the individuals named as associate editors of the respondents' dictionaries. It is clear from the record that the individuals employed by the respondents to edit and revise their dictionaries have not been generally recognized or outstanding scholars or specialists in philology and lexicography. Certain of the individuals whose names appear on the title pages or covers of the respondents' dictionaries in connection with the editing or revising thereof, namely, Thomas H. Russell, A. C. Bean, and L. B. Vaughan, have never even been in the respondents' employ. The respondents' representations to the effect that their dictionaries have been edited or revised by a staff of eminent scholars and educators, some of whose names have been listed on the title pages of certain of said dictionaries, have been and are false and misleading.

(c) Throughout the years during which the respondents have been publishing and selling their Webster dictionaries, they have frequently changed the title pages, covers, bindings, and jackets of said dictionaries without substantially changing the vocabularies thereof. Notwithstanding the fact that many of these dictionaries with the new title pages, covers, bindings, and jackets have carried the same vocabularies and definitions as dictionaries then or formerly published by the respondents with the different title pages, covers, bindings, and jackets, such dictionaries having been described and referred to by the respondents as follows:

WEBSTER'S UNIVERSITIES DICTIONARY
of the English Language

* * * * *

Newly Revised

Under the Direction of Joseph Devlin,
Elsie Wright, Josephine McCarter and
a staff of eminent scholars, educators
and office editors

(Comm. Ex. 42-B)

WEBSTER'S TWENTIETH-CENTURY DICTIONARY

* * * * *

Now Thoroughly Revised and Greatly Enlarged
and Improved * * *

(Comm. Ex. 43-B)

THE ROYAL WEBSTER DICTIONARY

* * * * *

A New Work Throughout

(Comm. Ex. 21)

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It Is A New Book

* * * * *

The New Universities WEBSTER Dictionary

(Comm. Ex. 37)

New Peerless WEBSTER Home, School and Office DICTIONARY

This Dictionary, as its title implies, is new right up to date, equipped with the latest words in the language, * * *.

(Comm. Ex. 19)

WEBSTER'S Criterion DICTIONARY

It contains more useful words than any other similar volume in the, language, * * *.

(Comm. Ex. 22)

WEBSTER'S NEW STANDARD DICTIONARY

Completely Revised and Re-edited!

(Comm. Ex. 29-A)

The record shows, however, that the respondents' Twentieth-Century Dictionary Unabridged (Comm. Ex. 43-B) and their Universities Dictionary Unabridged (Comm. Ex. 42-B) are made from the same plates; that these two dictionaries are alike as far as vocabularies and definitions are concerned; and that the only differences between the two books are that they have different titles and bindings, and that the Twenty-Century Dictionary carries some minor additions that the Universities Dictionary does not contain. Respondent Cahen testified that the same set of plates was used for The Royal Dictionary (Comm. Ex. 21) and New Age Webster Dictionary (Comm. Ex. 20-B), and it was stipulated by the respondents' counsel that the vocabulary in The New Universities Webster Dictionary (Comm. Ex. 37) was the same as the vocabularies in the New Peerless Webster Home, School, and Office Dictionary (Comm. Ex. 19), the Webster's New School and Office Dictionary (Comm. Ex. 33) and the Webster's Quiz Kids Dictionary (Comm. Ex. 34-B), and that the vocabularies in Webster's Criterion Dictionary (Comm. Ex. 22), Webster's New Standard Dictionary (Comm. Ex. 29-B), and Webster's New World Dictionary (Comm. Ex. 35-B), were all the same. The Commission therefore finds that the respondents, through the use of statements on the title pages and jackets of their dictionaries, and elsewhere, have represented to the public that many of their dictionaries were new and different from other dictionaries published by the respondents, when in truth and in fact they were and are substantially the same in vocabularies and definitions as other dictionaries then and theretofore published and sold by the respondents under different titles and with different covers and jackets.

PAR. 7. In addition to the foregoing, the complaint in this proceeding alleged that since 1847 the G. & C. Merriam Co. and its predecessors, George and Charles Merriam, have been engaged in the business of publishing and selling dictionaries under trade names which include the word "Webster's"; that the word "Webster" or "Webster's" has long been associated by the public with the dictionaries published by the said G. & C. Merriam Co. and its predecessors; and that the public now understands "Webster's" dictionaries to be those published by that firm. The complaint further charged that through the use of the name "Webster" or "Webster's" in the titles of their dictionaries, and elsewhere, the respondents herein represent and have represented, directly and by implication, that their dictionaries are those published by the G. & C. Merriam Co. or by their predecessors George and Charles Merriam. The complaint charged further that the respondents have falsely represented that the prices at which their dictionaries are offered for sale and sold are reduced or special prices much less than the usual selling prices of said dictionaries.

PAR. 8. The allegations of the complaint referred to in paragraph 7, excepting only the allegation concerning the use of the name "Webster" by the Merriams, have not been sustained by the greater weight of the evidence thereon.

(a) The record is undisputed that Noah Webster is generally recognized as the greatest lexicographer in American history. His first dictionary was published in 1806 under the title "A Compendious Dictionary of the English Language." It was published by Hudson and Goodwin, and by Increase, Cook & Co., and bore on its spine the title "Webster's Dictionary." Webster's second dictionary appeared in 1807 under the title "A Dictionary of the English Language Compiled for the Use of Common Schools in the United States," and it too had on its spine the name "Webster's Dictionary." The third Webster's Dictionary appeared in 1817 under the title "Common School Dictionary." It was published by George Goodwin & Sons. The fourth Webster's Dictionary was entitled "An American Dictionary of the English Language—1828 Edition," was in two volumes, and bore on its spine the words "Webster's Dictionary Published by S. Converse." The fifth and last Webster's Dictionary to be published during the life of Noah Webster was the American Dictionary of the English Language, First Edition in Octavo, in two volumes. It was copyrighted in 1840, was published by Noah Webster himself, and was printed in 1841 by B. L. Hamlin.

As far as the record in this proceeding shows none of the publishers of the first four Webster's Dictionaries above referred to ever assigned their publishing rights to anyone. By an agreement dated November 5, 1844, the executors of the estate of Noah Webster did transfer and assign to George and Charles Merriam all of the rights which said executors had to publish the American Dictionary in two volumes, royal octavo, entered for copyright in September 1840, and in 1853 and 1854 other agreements granted to the Merriams the right to renew the copyright of the same American Dictionary, to publish revisions and abridgments thereof and to publish Webster's School Dictionary. There is no proof of any kind, however, that the Merriams were ever granted the exclusive right to publish Webster's Dictionaries, or that they ever purchased the trade name Webster's Dictionary, or that they ever acquired any rights of any description in the dictionaries produced by Noah Webster in 1806, 1807, and 1828.

Nor were the Merriams the only publishers of a dictionary bearing the name "Webster" or "Webster's" between 1889 and 1904, as alleged in the complaint. Reports from the copyright office of the United States and the dictionaries themselves, which were introduced as exhibits in this proceeding, show that between 1889 and 1904 there were millions of copies of dictionaries bearing the name "Webster's" as a principal part of their titles published by various publishers in the United States. One witness for the respondents who has been in the business of publishing dictionaries since 1887 testified that between 1889 and 1904 his firm alone sold more than 1 million dictionaries a year, all bearing the name "Webster's" in the titles, and all published without any arrangement or contract with the Merriams. This witness testified further that he personally knew of at least 11 other companies which were engaged in the business of selling "Webster's" dictionaries prior to 1904; and the record is undisputed that since 1904 there have been and are now a great many publishers of dictionaries in the United States besides the G. & C. Merriam Co. who publish and sell dictionaries bearing the name "Webster" or "Webster's" as a part of their titles.

(b) The Webster's dictionaries published by the Merriams over the years have acquired a wide and favorable reputation. The current Merriam-Webster dictionaries, namely, Webster's New International Dictionary and Webster's Collegiate Dictionary, admittedly are of first rank in accuracy, scope of vocabulary and pronunciation. This was the general opinion of professors, librarians, and many learned men who testified in this proceeding. Even counsel for the respondents freely conceded that Merriam dictionaries are "most superior."

It has not been established, however, that the general public, or any substantial segment thereof, understands or believes that all of the dictionaries bearing the name "Webster" or "Webster's" are published by the G. & C. Merriam Co. or its predecessors. Of more than 40 individuals who were called to testify as public witnesses on this point, more than 30 of them had no such understanding, and the testimony of the remaining 10 was so vague and indefinite as to be entitled to little weight. A great many of said public witnesses did not even connect "Webster's" dictionaries with Noah Webster, and a number of them did not know whether it was Daniel or Noah Webster who wrote the original Webster's Dictionary. The greater weight of the evidence is that to the public the word "Webster" simply means a dictionary. It does not mean any particular dictionary, nor the dictionary of a particular publishing company. That this is so is shown not only by the testimony of the witnesses in this proceeding drawn from the general public, but also by the testimony of a number of college and university professors and librarians of many public libraries, whose opinion it was that the general public does not pay any attention at all to the names of publishers of dictionaries.

(c) It seems to be well settled among scholars and learned men that the word "Webster," when used in connection with a dictionary, connotes that said dictionary is a literary lineal descendant of the original Webster's dictionaries written by Noah Webster, and that such a dictionary was prepared according to principles employed by Noah Webster in the preparation of his dictionaries. The evidence shows that two professors of Columbia University examined and compared a large number of the dictionaries published by the respondents in this case with the view of determining whether or not they met the aforesaid tests, and both of these professors testified that said dictionaries were entitled to be called "Webster's" dictionaries. This same opinion was expressed by a number of other outstanding literary authorities.

(d) There is some evidence in the record from which it may be concluded that certain segments of the public do understand and believe that a dictionary bearing the name "Webster," by whomsoever published, is an accurate and up-to-date dictionary. There was no testimony by witnesses who were scholars or lexicographers, however, who had examined or studied the contents of the respondents' dictionaries and who were prepared to testify that said dictionaries were inaccurate or not up to date. There was considerable testimony, on the other hand, by a number of college professors who approved the general use of the respondents' dictionaries in offices and other places,

particularly where there is no demand for the study of scientific words or words in advanced English; and many other well-informed and highly educated people testified that they use certain of the respondents' dictionaries and that they find them adequate and entirely satisfactory for their purposes.

(e) The record in this proceeding does not show, and the Commission does not find, that the use by the respondents of the name "Webster" or "Webster's" in the titles of their dictionaries and in advertisements in respect thereto is deceptive or misleading. The record also fails to show that the respondents have falsely represented that the prices at which their dictionaries are offered for sale and sold are reduced or special prices less than the usual selling prices of said dictionaries.

PAR. 9. The use by the respondents of the exaggerated, erroneous, and misleading representations set forth in paragraphs 4 to 6, inclusive, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the false and erroneous belief that said representations are true and into the purchase of the respondents' dictionaries as a result of such false and erroneous belief. In consequence thereof, substantial trade has been diverted unfairly to the respondents from their competitors in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents as herein found (excluding those referred to in par. 7) are all to the prejudice and injury of the public and of the respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and written briefs for the respondents, counsel in support of the complaint, and counsel for G. & C. Merriam Co., as amicus curiae (oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclu-

sion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the corporate respondents, The World Syndicate Publishing Co., The World Publishing Co., and The Commercial Bookbinding Co., and their officers, and the individual respondents, Alfred Cahen and Ben D. Zevin, and said respondents' respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of their dictionaries, do forthwith cease and desist from representing, directly or by implication:

1. That any of said dictionaries are the dictionaries of Noah Webster or that they are published by Noah Webster or his successors;
2. That said dictionaries have been edited or revised by a staff of eminent authorities in philology or lexicography; or that said dictionaries have been edited or revised by individuals who have not in fact actually assisted in the editing or revision thereof;
3. That certain of said dictionaries are new or different from other dictionaries published by the respondents when in truth and in fact said dictionaries contain identical or substantially identical vocabularies and definitions as other dictionaries then or theretofore published and sold by the respondents under different titles or with different prefaces, covers, bindings or jackets.

It is further ordered, For reasons set forth in the Commission's findings as to the facts in this proceeding, that the complaint herein be, and it hereby is, dismissed as to the respondent J. L. Russell.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Complaint

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IN THE MATTER OF

AUTONATOR LABORATORIES CO. AND HARRY ABELSON

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5638. Complaint, Feb. 11, 1949—Decision, Dec. 6, 1949*

Where a corporation and its president, who controlled its policies, engaged in the manufacture and interstate sale and distribution of their immersion electrode type "Hot Donut Water Heater,"

(a) Represented, through statements in advertisements in newspapers and circulars, that their said water heater would produce hot boiling water in a "jiffy," and that steaming hot water, heated to any temperature, would be afforded in a very short period of time, or before the user in normal course anticipated using it;

Notwithstanding the fact that it required considerable time in its heating action, depending in part upon the amount of water heated;

(b) Represented falsely, through use of the word "Laboratories" as a part of the corporate name, in advertising literature, circulars, on letterheads and otherwise, that they owned, operated or controlled an establishment containing substantial equipment and apparatus for use in studying and experimentation by scientists or technicians employed for such purposes, and for the conduct of research in connection with the application of electricity to water heating facilities; and

(c) Impliedly represented that their heater was harmless under all conditions of ordinary use, through failing to reveal in their advertising, or in the directions set forth upon the tag attached to said device, the dangerous consequences which might result therefrom, in that, used otherwise than as specified, and under some conditions, intolerably large amounts of electricity might flow through portions of the body, and electrocution was possible;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such statements were true, and that their said product was harmless in use, and thereby induce its purchase of said potential electrical hazard:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Frank Hier*, trial examiner.

Mr. Morton Nesmith for the Commission.

Bell & Ehrlick, of Washington, D. C., and *Mr. Adolf Loeb*, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of authority vested in it by said act, the Federal Trade

Commission having reason to believe that Autonator Laboratories Co., a corporation, and Harry Abelson, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Autonator Laboratories Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 460 South State Street, in the city of Chicago, State of Illinois. Respondent Harry Abelson is the president of said corporation and its principal director and as such controls the policies of said corporation. His address is 460 South State Street, in the city of Chicago, State of Illinois.

PAR. 2. Said respondents are now and for several years last past have been engaged in the manufacture and sale of an electric water heater designated as "Hot Donut Water Heater."

Said Hot Donut Water Heater is an immersion electrode-type appliance in which the heating element is exposed and in direct contact with the water or liquid. It consists of a chrome-nickel coil-wire heating element mounted on an asbestos core and encased in two aluminum shells.

PAR. 3. Respondents cause and have caused said "Hot Donut Water Heater" when sold to be shipped from their place of business in the State of Illinois to wholesalers, distributors and retailers located in various other States of the United States and in the District of Columbia. Said wholesalers, distributors, and retailers in turn sell said hot water heater to the general public or to retailers for sale to the general public. Respondents maintain and at all times mentioned herein have maintained a course of trade in said hot water heater in commerce, between and among the various States of the United States and in the District of Columbia. Their volume of business in said hot water heater in such commerce is substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their said product in commerce, respondents, subsequent to the summer of 1946, made certain statements and representations concerning said product by means of advertisements inserted in newspapers and in circulars, both of which were circulated among the purchasing public. Among and typical of such statements and representations are the following:

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BOILING HOT WATER IN A JIFFY!

How many times have you needed hot water in a hurry for emergency or regular use—and found yourself baffled for lack of it? Now your HOT WATER problems banished forever.

Just plug into any electrical outlet—immerse the Hot Donut in water and in a jiffy before you are ready to use it, steaming hot water heated to any temperature is ready for use.

PAR. 5. Through the use of the advertisements and circulars herein-above set forth and others of the same import, but not specifically set out herein, the respondents have represented that their Hot Donut Water Heater will produce hot boiling water in a jiffy and that steaming hot water, heated to any temperature, will be ready for use before one is ready to use the same.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, said water heater will not produce “hot boiling water in a jiffy” nor will it produce “hot water in a hurry for an emergency or regular use,” nor will it produce “steaming hot water heated to any temperature in a jiffy and before you are ready to use it,” but to the contrary, requires considerable time in its heating action, depending upon the amount of water heated.

PAR. 7. Respondents, by and through the use of the word “Laboratories” as a part of the corporate name, “Autonator Laboratories Co.” in advertising literature, circulars, on letterheads and otherwise, represent that they own, operate or control an establishment containing substantial equipment and apparatus for use in study and experimentation by scientists or technicians employed for such purposes. In truth and in fact, respondents do not own, operate, or control such an establishment and do not employ scientists or technicians for the purposes of study or experimentation.

PAR. 8. Attached to the cord of each heater is a cardboard tag upon which is printed, among other things, the following:

DIRECTIONS

Read Before Using Heater

1. For use only on 110 volts, A. C. and D. C. use a twenty (20) ampere fuse.
2. To operate water heater, *first* place *under* water, then plug into electrical outlet and *last* turn on current.
3. *Always* pull plug *before* removing heater from water. *Never* have current “on” unless heater is completely under water.
4. *Never* touch water while current is “on.”
5. *Never* use in any liquid other than *clean* water (*never* in salt water).
6. For bath, place 5 or 6 inches of water in tub. When heater has brought it to boiling point, pull electric plug and remove heater. You can then temper with cold water, to suit.

PAR. 9. Respondents' product, under some conditions of ordinary use, constitutes a serious electrical hazard in that intolerably large currents of electricity may flow through portions of the human body; in fact, under some conditions of ordinary use, electrocution is possible. By failing to reveal these facts, respondents impliedly represent, contrary to the facts, that said product is harmless under all conditions of ordinary use. Said advertisements and the tag or label attached to the product are further misleading and deceptive in that they fail to reveal the dangerous consequences which may result from the use of said product in some conditions of ordinary use.

PAR. 10. The use by the respondents of the aforesaid statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements are true, and that said product is harmless when used as directed under all ordinary conditions, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said "Hot Donut Hot Water Heater."

PAR. 11. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 11, 1949, issued and subsequently served its complaint in this proceeding upon the respondents, Autonator Laboratories Co., a corporation, and Harry Abelson, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the filing of respondents' answer, at a hearing before a trial examiner of the Commission theretofore duly designated by it, certain facts in lieu of other evidence were stipulated on the record, together with a form of order to cease and desist which counsel supporting the complaint and counsel for respondents joined in recommending to the Commission for adoption, it being further stipulated that the Commission may proceed to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without further intervening procedure. Thereafter this proceeding came on for consideration before the Commission upon the complaint, answer, the stipulated facts, and the recommended order of counsel; and the Commission in declining, for

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the reasons therein expressed, to dispose of this proceeding by the entry or order to cease and desist in the form proposed by counsel, on September 30, 1949, issued tentative order to cease and desist with leave to show cause and afforded opportunity to respondents to show cause why such tentative order should not be entered as an order to cease and desist. Respondents not having appeared in response to such leave to show cause, this proceeding regularly came on for final hearing before the Commission on the record; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Autonator Laboratories Co. is a corporation organized, existing, and doing business under the laws of the State of Illinois, with its office and principal place of business located at 460 South State Street, Chicago, Ill. Respondent Harry Abelson is the president of said corporation and its principal director and as such controls its policies. His address is 460 South State Street, Chicago, Ill.

PAR. 2. Respondents are now and for several years last past have been engaged in the manufacture and sale of an electric water heater designated as "Hot Donut Water Heater." Respondents' product is an immersion electrode-type appliance in which the heating element is in direct contact with the water or liquid. It consists of a chromenickel coil-wire heating element mounted on an asbestos core and encased in two perforated aluminum shells.

PAR. 3. Respondents cause and have caused their Hot Donut Water Heater when sold to be shipped from their place of business in the State of Illinois to wholesalers, distributors, and retailers located in various other States of the United States and in the District of Columbia. Such wholesalers, distributors, and retailers in turn sell respondents' products to the general public or to retailers for sale to the general public. Respondents maintain and at all times mentioned herein have maintained a course of trade in said water heater in commerce between and among the various States of the United States and in the District of Columbia. The volume of business in said product in such commerce is substantial.

PAR. 4. In the course and conduct of their business and for the purpose of inducing the sale of their said product in commerce, respondents, subsequent to the summer of 1946, made certain statements and

representations concerning said product by means of advertisements inserted in newspapers and in circulars, both of which were circulated among the purchasing public. Among and typical of such statements and representations are the following:

BOILING HOT WATER IN A JIFFY!

How many times have you needed hot water in a hurry for emergency or regular use—and found yourself baffled for lack of it? Now your **HOT WATER** problems banished forever.

Just plug into any electrical outlet—immerse the Hot Donut in water and in a jiffy before you are ready to use it, steaming hot water heated to any temperature is ready for use.

PAR. 5. Through the use of the advertisements and circulars hereinabove set forth, and others of similar import not specifically set out herein, the respondents have represented that their Hot Donut Water Heater will produce hot boiling water in a jiffy, and that steaming hot water, heated to any temperature, will be afforded in a very short period of time, or before the user in normal course anticipates using it.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. Respondents' water heater will not produce hot or boiling water "in a jiffy," nor will it produce steaming hot water in a very short period of time. Respondents' water heater requires considerable time in its heating action, depending in part upon the amount of water heated. In such connection controlled tests or experiments with respondents' product show that the following periods of time are required for heating water under the conditions specified:

Elapsed time, minutes	Temperature of water in degrees Fahrenheit			Elapsed time, minutes	Temperature of water in degrees Fahrenheit		
	3 pints	6 pints	9 pints		3 pints	6 pints	9 pints
0.....	70	59	57	15.....	184	149	
1.....	86	69	64	18.....	200	163	
3.....	121	88	76	21.....	207	178	
6.....	167	116	95	24.....		190	
9.....	200	142	115	27.....		210	
12.....	204	164	132	30.....		206	

PAR. 7. The use of the word "Laboratories" as a part of the corporate name "Autonator Laboratories Co.," in advertising literature, circulars, on letterheads, and otherwise, has the capacity and tendency to lead purchasers to believe that respondents own, operate, or control an establishment containing substantial equipment and apparatus for use

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in studying and experimentation by scientists or technicians employed for such purposes. In truth and in fact, respondents do not own or control such an establishment and do not employ scientists or technicians for the purpose of experimentation or for the conduct of research in connection with the application of electricity to water heating facilities.

PAR. 8. Attached to the cord of each heater is a cardboard tag upon which is printed, among other things, the following:

DIRECTIONS

Read Before Using Heater

1. For use only on 110 volts, A. C. and D. C. use a twenty (20) ampere fuse.
2. To operate water heater, *first* place *under* water, then plug into electrical outlet and *last* turn on current.
3. *Always* pull plug *before* removing heater from water. *Never* have current "on" unless heater is completely under water.
4. *Never* touch water while current is "on."
5. *Never* use in any liquid other than *clean* water (*never* in salt water).
6. For bath, place 5 or 6 inches of water in tub. When heater has brought it to boiling point, pull electric plug and remove heater. You can then temper with cold water, to suit.

PAR. 9. Respondents' product, under some conditions of use in heating water but not when used as set forth in the paragraph above, constitutes an electrical hazard in that intolerably large amounts of electricity may flow through portions of the human body. Under some conditions of use, electrocution is possible. By failing to reveal these facts, respondents impliedly represent that their water heater is harmless under all conditions of ordinary use. Respondents' advertising, particularly the tag or label attached to the product, is misleading and deceptive by reason of the failure to reveal the dangerous consequences which may result under some conditions from use of said product.

PAR. 10. The use by respondents of the aforesaid statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements are true and that respondents' product is harmless in use, and to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondents' Hot Donut Water Heater.

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The acts and practices of respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive

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acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission, upon the complaint of the Commission, the answer of respondents, certain stipulations of fact submitted for the record in lieu of other evidence by counsel for the respondents and counsel supporting the complaint together with a form of order to cease and desist which counsel jointly recommended to the Commission for adoption, and the tentative order to cease and desist issued subsequently by the Commission in connection with which respondents were afforded opportunity to show cause why such order should not be entered as the order to cease and desist in this proceeding; and respondents having not appeared in response to such leave to show cause and the Commission having thereafter made its finding as to the facts and its conclusion that respondents have violated the Federal Trade Commission Act:

It is ordered, That respondents, Autonator Laboratories Co., a corporation, its officers, representatives, agents, and employees, and Harry Abelson, his agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' electric water heating device, "Hot Donut Water Heater," or any substantially similar device, whether sold under the same name or any other name, do forthwith cease and desist from:

(1) Representing that said device will produce boiling hot water or steaming hot water "in a jiffy," or afford hot water in any other period of time less than is actually required; provided, however, that nothing herein shall prohibit use of the word "jiffy" to designate the period required to heat water if in immediate and conspicuous conjunction therewith respondents truthfully state the time required to raise one or more designated volumes of water of stated temperature to a specified temperature level.

(2) Using the word "Laboratories," or any other word of similar import or meaning, to designate, describe, or refer to respondents' business, or representing through any other means that either of said respondents owns, operates, or controls a laboratory or establishment containing substantial equipment and apparatus for use in study and experimentation by scientists or technicians employed for such purposes or for the conduct of research in connection with the application of electricity to water heating facilities.

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(3) Distributing or selling said device unless the word "caution" or "warning," together with adequate directions for safe use of the device, is indelibly impressed, imprinted, or affixed thereon, informing the user that unless the directions for use are strictly followed dangerous electric shock may result; provided, however, that the word "caution" or "warning," whichever is used, may be accompanied by reference to adequate directions for safe use separately but securely attached to the device and which inform the user that unless such directions are strictly followed dangerous electric shock may result.

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

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IN THE MATTER OF

AMERICANA CORPORATION ET AL.

MODIFIED CEASE AND DESIST ORDER

Docket 5085. Order Dec. 8, 1949

Modified order in proceeding in question, in which original order issued on July 14, 1948, 45 F. T. C. 32, requiring respondent, its officers, etc., in connection with the offering, etc., in commerce, of respondent's encyclopedia designated "Americana" or "Encyclopedia Americana" and material supplementary thereto, or any other publication, to cease and desist from representing that its said publication is the best known, etc., published in the United States, and contains more articles than any other encyclopedia, and from making various other misrepresentations in connection with the offer of said product, as below in detail set out.

Before *Mr. Randolph Preston*, trial examiner.

Mr. John M. Russell for the Commission.

Mr. J. Raymond Tiffany, of Hoboken, N. J., and *Mr. Benjamin Werne*, of New York City, for respondents.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's answers thereto, and a stipulation of facts entered into by and between counsel for the respondents and counsel in support of the complaint (the recommended decisions of the trial examiner, briefs, and oral argument having been waived); and the Commission, having made its findings as to the facts and its conclusion that the respondents had violated the provisions of the Federal Trade Commission Act, on July 14, 1948, issued, and on July 28, 1948, served upon each of the respondents its order to cease and desist. Thereafter, this matter came on for hearing before the Commission upon a petition, filed on behalf of the respondent, Americana Corporation, requesting certain modifications in the aforesaid order to cease and desist, and the answer to such petition filed by counsel in support of the complaint; and the Commission, having considered said petition and answer and the record herein, and being of the opinion that its order to cease and desist issued July 14, 1948, should be modified in certain respects:

It is ordered, That the respondent, Americana Corporation, a Delaware corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in con-

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nection with the offering for sale, sale or distribution of its encyclopedia designated "Americana" or "Encyclopedia Americana" and material supplementary thereto, or any other publication, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Representing, directly or by implication, that said publication is the best known or most authoritative encyclopedia published in the United States, or that it is America's supreme authority;

(2) Representing, directly or by implication, that said publication contains more articles than any other encyclopedia, or that it presents more information than any other set of books;

(3) Representing, directly or by implication, that said publication is the choice of all government departments, educational institutions, boards of education or public libraries as the official reference work;

(4) Representing, directly or by implication, that said publication is available only to selected individuals under special conditions when such is not the fact;

(5) Representing, directly or by inference, that individuals employed by the respondent to sell its publication are anything other than salesmen soliciting prospects to purchase said publication at prices regularly established by the respondent;

(6) Representing as the customary or usual price of said publication any price or value which is in fact in excess of the price at which it is customarily offered for sale and sold in the usual course of business;

(7) Representing that any issue of said publication constitutes a new edition thereof, unless and until the contents of former editions have been revised and new encyclopedic material has been added to the extent necessary to reflect the then current information on the various subjects covered by such publication.

It is further ordered, For reasons appearing in the Commission's findings as to the facts, that the complaint herein be, and it hereby is, dismissed as to the individual respondents, Fred P. Murphy, Joseph C. Graham, Jr., and Thomas J. Kirk.

It is further ordered, That the respondent, Americana Corporation, 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.

Commissioner Mason not participating.

Complaint

IN THE MATTER OF

JERRY ROTHSCHILD TRADING AS V. M. PRODUCTS

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5574. Complaint, July 9, 1948—Decision, Dec. 14, 1949

Where an individual engaged in the interstate sale and distribution of a tablet drug preparation designated "V. M." or "VegeMucene"; through statements in newspapers and other advertising—

- (a) Falsely represented that colitis and gas stomach are due to hyperacid conditions of the stomach; when in fact the condition of gas stomach is usually caused by swallowing air, and colitis may be due to causes many of which are not definitely known, and all of which require careful examination, diagnosis, and medical experimentation before relief may be obtained;
- (b) Falsely represented that said preparation contained mucine, a gluco-protein material derived from the glands of various animals; the facts being it contained a vegetable material of a slimy, mucilaginous nature;
- (c) Falsely represented that said preparation, taken as directed, had therapeutic value in the relief and treatment of inflammation of the stomach and intestine, acid stomach, gas stomach, colitis, and ulcers of the stomach and intestines; and
- (d) Falsely represented that it would correct hyperacid conditions and absorb excess stomach acids, provide a lining for the stomach and connecting intestines, and give inflammation of those areas a chance to heal;

With effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true, and with capacity and tendency so to do, and thereby induce its purchase of his said preparation:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Frank Hier*, trial examiner.

Mr. Joseph Callaway for the Commission.

Miller, Sher & Oppenheimer, of Washington, D. C., and *Gottlieb, Schwartz & Friedman*, of Chicago, Ill., for respondent.

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 Jerry W. Rothschild, an individual, doing business as V. M. Products, hereinafter referred to as respondent, has 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:

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PARAGRAPH 1. Respondent, Jerry W. Rothschild, is an individual with his office and principal place of business located at 2561 North Clark Street, Chicago, Ill.

PAR. 2. Respondent, Jerry W. Rothschild, is now and has been for several years last past engaged in the business of selling and distributing a certain drug preparation as "drug" is defined in the Federal Trade Commission Act. The designation used by respondent for his preparation, the formula and directions for its use are as follows:

Designation: V. M., a vegetable mucinoid; also known as VegeMucene.	
Formula:	<i>Grains</i>
Okra (dehydrated)-----	17.5
Excipients:	
Glucose-----	4.1
Talc-----	1.3

Directions for use: Average dosage 1 tablet every 2 hours to be chewed thoroughly and followed by one-fourth glass of cold water. Dosage may be increased or decreased as required.

Said respondent causes said preparation when sold to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, respondent, subsequent to March 21, 1938, has disseminated and caused the dissemination of certain advertisements concerning the said preparation by means of the United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements furnished and paid for by respondent but published over the name of various retail establishments in the following newspapers on the dates mentioned, as follows:

- Fall River Herald News, Fall River, Mass., April 12, 1946;
- Indianapolis News, Indianapolis, Ind., April 9, 1946;
- Cleveland Plain Dealer, Cleveland, Ohio, April 2, 1946;
- Philadelphia Record, Philadelphia, Pa., March 24, 1946;
- Newark News, Newark, N. J., March 13, 1946;
- Evansville Sunday Courier and Express, Evansville, Ind., March 10, 1946;
- Portsmouth Times, Portsmouth, Ohio, March 7, 1946;
- Minneapolis Tribune, Minneapolis, Minn., March 10, 1946;
- San Francisco Chronicle, San Francisco, Calif., February 17, 1946;
- Indianapolis Star, Indianapolis, Ind., January 31, 1946;
- Kansas City Star, Kansas City, Mo., January 27, 1946;
- Pittsburgh Sun Telegraph, Pittsburgh, Pa., November 11, 1945;
- Bellingham Herald, Bellingham, Wash., January 9, 1946;

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Minneapolis Daily Times, Minneapolis, Minn., August 10, 1945;
 Philadelphia Daily News, Philadelphia, Pa., August 10, 1945;
 San Francisco News, San Francisco, Calif., July 6, 1945;
 Minneapolis Shopping News, Minneapolis, Minn., April 13, 1945;
 Columbus Citizen, Columbus, Ohio, February 27, 1945;
 Arizona Republican, Phoenix, Ariz., January 7, 1945;
 and respondent has disseminated and caused the dissemination of advertisements concerning the said preparation including but not limited to the advertisements referred to above for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Among the statements and representations contained in said advertisements disseminated as aforesaid are the following:

ULCERS	COLITIS
ACID	STOMACH

due to hyperacidity can be quickly relieved by a revolutionary DRUGLESS preparation known as V. M.

Here's Amazing Relief From

ACID STOMACH

and Ulcers Due to Acidity

Correct hyperacid conditions of Ulcers, Colitis, Gas and Acid Stomach with V. M. * * * Provides stomach and connecting intestines with protective lining of vegetable mucin, coating over inflamed surfaces and protecting them against excess stomach acids and irritating food roughages, thus giving inflammations a chance to heal. V. M. also absorbs excess stomach acids.

PAR. 5. Through the use of the advertisements hereinabove set forth and others of the same import but not specifically set out herein, respondent represented that colitis and "gas" stomach are due to hyperacid conditions of the stomach; that said preparation when taken as directed has therapeutic value in the relief and treatment of inflammations of the stomach and intestines, acid stomach, gas stomach, colitis, and ulcers of the stomach and intestines; that it contains mucin; that it will provide a protective lining for the stomach and connecting intestines and will give inflammations in those areas a chance to heal; that it will correct hyperacid conditions and will absorb excess stomach acids.

PAR. 6. Said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act. In truth and in fact, "gas stomach" is usually due

to swallowing air and not usually related to hyperacidity. Colitis is never due to hyperacidity and V. M. will not relieve colitis or be of value in the treatment thereof. Ulcers of the colon, inflammation of the colon, stomach ulcers, duodenal ulcers, and peptic ulcers require a definite appraisal of the condition and a careful regimen of diet, rest, and other corrective measures to hold out any hope of relief. The same is true of other diseases and conditions which have acid stomach as one of their symptomatic manifestations. The free acid in the stomach is not absorbed or reduced in any significant amount by respondent's preparation nor is it corrected by V. M. which is itself rather promptly digested and then nearly all of it is removed by absorption from the intestinal tract. V. M. tablets contain no mucin. When the tablets are taken as directed, it will not furnish a protective coating for inflamed surfaces of the stomach or intestines or give inflammations a chance to heal.

PAR. 7. The aforesaid acts and practices are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 9, 1948, issued and subsequently served its complaint in this proceeding upon the respondent, Jerry W. Rothschild, an individual trading as V. M. Products, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After respondent filed his answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing by the Commission upon the complaint, the answer thereto, testimony and other evidence, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed by respondent and no oral argument having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Jerry W. Rothschild, is an individual trading and doing business as V. M. Products, with his office and principal place of business located at 2561 North Clark Street, Chicago, Ill. He is now, and for several years last past has been, engaged in the offering for sale, sale, and distribution of a drug preparation designated "V. M." or "VegeMucene," prepared in tablet form. Each tablet contains 18 grains dehydrated okra, 5.5 grains of glucose and excipients, and 0.5 grain of talc. Respondent recommends the use of said preparation as follows: "Average dosage 1 tablet every 2 hours to be chewed thoroughly and followed by one-fourth glass of cold water. Dosage may be increased or decreased as required."

PAR. 2. In the course and conduct of his aforesaid business, respondent causes, and has caused, his said preparation, when sold, to be shipped from his place of business in the State of Illinois to purchasers thereof at their respective points of location in various other States of the United States and in the District of Columbia, and maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. (a) In the course and conduct of his aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparation by United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparation by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

(b) Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated as hereinabove set forth, by United States mails, by advertisements inserted in newspapers, and other advertising, are the following:

Ulcers	Colitis
Acid	Stomach

due to hyperacidity can be quickly relieved by a revolutionary
Drugless preparation known as V. M.

* * * * *

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Here's Amazing Relief from

ACID STOMACH

and Ulcers Due to Acidity

Correct hyperacid conditions of Ulcers, Colitis, Gas and Acid Stomach with V. M. * * * Provides stomach and connecting intestines with protective lining of vegetable mucin, coating over inflamed surfaces and protecting them against excess stomach acids and irritating food roughages, thus giving inflammations a chance to heal. V. M. also absorbs excess stomach acids."

PAR. 4. Through the use of the foregoing statements and representations and others similar thereto not specifically set out herein, respondent represents, and has represented; (a) That colitis and gas stomach are due to hyperacid conditions of the stomach; (b) that the preparation "V. M." or "VegeMucene" contains mucin; (c) that said preparation, when taken as directed, has therapeutic value in the relief and treatment of inflammation of the stomach and intestines, acid stomach, gas stomach, colitis, and ulcers of the stomach and intestines; (d) that said preparation will provide a lining for the stomach and connecting intestines and will give inflammation of those areas a chance to heal; and (e) that said preparation will correct hyperacid conditions and absorb excess stomach acids.

PAR. 5. (a) The statements and representations set forth in paragraphs three and four above are grossly exaggerated, false, misleading, and deceptive in the following particulars:

(b) Neither colitis nor gas stomach is due to, or caused by, hyperacid conditions of the stomach or hyperacidity. The condition of gas stomach is usually caused by swallowing air, and colitis may be due to causes many of which are not definitely known and all of which require careful examination, diagnosis, and medical experimentation before relief may be obtained.

(c) Mucin is a gluco-protein material derived from the glands of various animals. Respondent's preparation contains no such material. It is a plant material of a slimy, mucilaginous nature, derived from a vegetable source.

(d) Respondent's preparation has no significant beneficial effect on hyperacidity and is wholly ineffective in the relief, treatment, or cure of gas stomach, colitis, acid stomach, ulcers of the stomach or colon, or duodenal or peptic ulcers, or inflammation of the stomach, colon, or intestines. All of said conditions arise from causes many of which are not definitely known but all of which require proper examination, diagnosis, and individual treatment before relief may be expected.

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(e) Said preparation will not absorb excess stomach acids and will not provide a lining or coating for the stomach or intestines which may protect them from excess stomach acids or food roughages, and therefore its use will not give inflammations in these areas a chance to heal.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparation, disseminated as aforesaid, has had, and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said preparation.

CONCLUSION

The acts and practices of respondents as herein found are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed by respondent and oral argument not having been requested); and the Commission having made its findings as to the facts and conclusion that respondent has violated the Federal Trade Commission Act:

It is ordered, That respondent, Jerry W. Rothschild, an individual, trading and doing business as V. M. Products or under any other name or names, his agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of his preparation designated "V. M." or "VegeMucene," or any other product or products of substantially similar composition or possessing substantially similar properties, whether sold under the same name or any other name or names, do forthwith cease and desist from, directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or by any other means in commerce, as "commerce" is defined in the Federal Trade Commission

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Act, which advertisement represents, directly or through inference,

(a) Either colitis or gas stomach is due to, or caused by, hyperacid conditions of the stomach or hyperacidity.

(b) The preparation "V. M." or "VegeMucene" contains mucin.

(c) Said preparation has any significant beneficial effect on hyperacidity, or will correct hyperacid conditions.

(d) Said preparation constitutes an effective relief, treatment, or cure for inflammation of the stomach and intestines, gas stomach, colitis, acid stomach, or ulcers of the stomach or intestines.

(e) Said preparation will absorb excess stomach acids or will provide a lining or coating for the stomach or intestines which may protect them from excess stomach acids or food roughage.

(f) The use of said preparation will give inflammation of the stomach or intestines a chance to heal.

2. Disseminating, or causing the dissemination of, any advertisement by any means for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

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

Syllabus

IN THE MATTER OF
BERTRAM A. UNGER, TRADING AS CELLO-PLASTIC
CHEMICAL COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5390. Complaint, Oct. 15, 1945—Decision, Dec. 20, 1949

The protective-coating industry has known and made use of raw materials used in the manufacture of plastics for more than 25 years, and it is not unusual for the basic film-forming ingredients of surface coatings to be composed in whole or in part of one or more of such raw materials.

The term "molded plastic products" applies generally to a large number of useful articles, such as ash trays, telephones, luggage, jewelry, etc. which have been fashioned through application of pressure and heat to certain synthetic organic substances, some of which are derived from coal, petroleum or wood. Such products, depending upon the use for which they are intended, may have innumerable built-in characteristics, i. e., they may be as hard as rock or as pliable as a sheet of rubber, as thin as tissue, or in solid blocks or any desired shape, transparent or opaque, in varying colors, inflammable, or flame resistant, etc.

Where an individual engaged in the interstate sale and distribution of various types of paints and related products designated "Cello-Plastic"; in advertising his said "Cello-Plastic" paint products in newspapers and periodicals, advertising folders, pamphlets and circular letters and otherwise—

- (a) Falsely represented that his said products were the result of startling new discoveries in liquid plastic; were more than just paints; would provide lifetime finishes; and would not crack, blister or peel; the facts being that the inclusion therein, as claimed, of one or more of the various synthetic resins commonly used in the manufacture of plastics, did not render his products either materially different from or substantially better than those of many of his competitors; and they would not accomplish the results claimed therefor as above set forth;
- (b) Falsely represented that one coat of his "Outside Cello-Plastic" was equivalent to five coats of ordinary paint; the facts being that the composition of said product, including the pigment, volatile vehicle, and nonvolatile vehicle, was substantially the same as that of many other good quality paints on the market;
- (c) Falsely represented that his "Cello-Plastic Floor Finish" produced a tough, bright finish which resisted cigarette burns, alcohol, grease, boiling water and the like; the facts being that the surfaces to which said product was applied in tests by the Bureau of Standards were seriously marred, softened, or removed by burning cigarettes, alcohol, grease, hot water and lye solutions;
- (d) Falsely represented that his "Inside Cello-Plastic" held its color and luster under all conditions; the facts being that a number of users found that it did fade, blister and powder; and

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(e) Falsely represented that his "Cello-Plastic Enamel" had the same properties as genuine molded plastic products; the facts being that the nature and purpose of a product intended for use as a surface coating precluded the possibility of its having the innumerable built-in characteristics, depending upon the use for which intended, associated with such products; and

(f) Falsely represented that his "Cello-Plastic Water Proofed Paint" was a modern miracle of science; and

Where said individual, engaged as aforesaid—

(g) Falsely represented, through the use of the words "Chemical Company" in his business or trade name, and the statement "A House of Chemical Engineers" on his business stationery and elsewhere, that his business was that of a dealer in chemicals and that he had in his employ chemical engineers who scientifically prepared the products he sold;

When in fact he performed no operations in connection with the paint products he sold other than placing his labels upon the containers in which he received them from his suppliers;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce its purchase of substantial quantities of his said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects the charge of the complaint in the instant proceeding, that respondent's use of the term "Cello-Plastic" in his trade name and in designating his products was misleading and deceptive, the Commission was of the opinion and found that his said charges were not sustained by the greater weight of the evidence.

With regard to the paramount issue in the proceeding, in the view of counsel and the trial examiner, namely, respondent's use of the word "plastics" to refer to his paint products, challenged by the complaint on the theory that said products are not plastics as the term is understood by the trade and the purchasing public, and the question as to whether or not this was true: the record did not present an adequate basis for a satisfactory disposition of the questions involved, since aside from a sharp disagreement both in and out of the industry as to whether and under what circumstances, if at all, a surface covering might properly be referred to as a "plastic paint," and the opinion of experts from the Bureau of Standards that a paint might be properly so referred to if the covering contained at least 50 percent of the soluble solids used in the manufacture of plastics, the analyses made in the case, with the possible exception of respondent's "Cello-Plastic Floor Finish," did not place the Commission in a position to find whether or not respondent's products met such a standard; and the Commission accordingly made no findings on the issue of whether or not said individual's paint products might or might not properly be referred to as "plastic" paints.

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As respects numerous other misrepresentations which the complaint in said proceeding charged respondent with making in connection with different claims for his various "Cello-Plastic Products," namely, his "Floor Finish," "Waterproof Paint," "Enamel," "Outside Cello-Plastic," and "Inside Cello-Plastic," and including, as the case might be, nonskid plastic floor finish which eliminated waxing and polishing, etc., adaptability for wood, concrete, asphalt, tile, or inlaid linoleum, durability, waterproofing qualities, tile or porcelain like qualities of the finish, qualities of adhesion, penetration, insulation, self-leveling, etc., the Commission was of the opinion and found that charges with respect to the falsity of such representations had not been sustained by the greater weight of the evidence.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Melvin A. Albert, of New York City, for respondent.

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 *Bertram A. Unger*, an individual, trading as Cello-Plastic Chemical Co., hereinafter referred to as the respondent, has 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. *Bertram A. Unger* is an individual, trading as Cello-Plastic Chemical Co., with his office and principal place of business located at the corner of Cypress and Aspen Streets, Pittsburgh, Pa

PAR. 2. The respondent is now, and for more than 1 year last past, has been engaged in the sale and distribution of paints and varnishes designated as Cello-Plastic.

The respondent causes said products, when sold, to be transported from his said place of business in the State of Pennsylvania to purchasers thereof located at various points in the several States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce between and among the various States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business and for the purpose of inducing the purchase of his products, the respondent has circulated and is now circulating, among prospective purchasers throughout the United States, by United States mails, by means of

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advertisements inserted in newspapers and magazines, by means of advertising folders, pamphlets, circular letters, and other advertising material, all of general circulation, many false statements and representations concerning his said products. Among and typical of such false statements and representations are the following:

HERE IS THE PAINT OF TOMORROW . . . TODAY!
Plasticize Your Floors With Cello Plastic Floor Finish

—remarkable non-skid plastic floor finish that banishes waxing and polishing. Tough, bright, resistant to cigarette burns, alcohol, grease, boiling water and even lye. Ideal for wood, concrete, asphalt, tile, linoleum. 10 attractive colors or clear. \$6.75 per gallon.

CELLO-PLASTIC . . . LIQUID "CELLOPHANE" LIKE FLOOR FINISH
NOW! A NON-SKID PLASTIC FLOOR FINISH THAT OUTWEARS WAX
200 to 1.

Representations concerning Cello Plastic Waterproof Paint:

BÉAUTIFY AND WATERPROOF Your Basement with CELLO PLASTIC
Waterproofed PAINT.

Waterproof, beautify, healthify that recreation room, those basement walls and floor with Cello Plastic, Modern Miracle of Science. Triple action performance. Penetrates, Waterproofs, Preserves. For concrete floors and all masonry INSIDE or OUTSIDE, damp or dry, painted or unpainted. Several attractive colors.

Representations concerning Cello Plastic:

REPAINT AND WATERPROOF with CELLO PLASTIC
The Paint of Tomorrow—TODAY

Cello Plastic, a startling discovery in liquid plastics, makes it possible for you to refinish both exterior and interior with a real plastic coating.

SATISFACTION GUARANTEED

Cello Plastic is more than just a paint. It is a liquid film that flows on easily, then penetrates and clings to the old surface, covering cracks and scratches, leaving that "porcelain-like" finish. This new flexible paint is fadeproof, waterproof and does not crack, blister or peel.

PLASTICS are today's wonder material . . . from Nylon hose to stretchable glass shoes, from radio panels to tropical army helmets, from "CELLOPHANE" to telephones, plastics appear in new form every day. And now, you can get it in liquid form . . . a plastic floor finish that can "take it".

A Scientifically Prepared Plastic Coating for Exterior and Interior Surfaces
CELLO PLASTIC insulates the home; makes it cool in summer and warmer in winter. * * * it will protect surfaces everywhere.

* * * * *

CELLO PLASTIC is waterproof.

CELLO PLASTIC is fireproof.

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CELLO PLASTIC is more than a paint, it becomes a part of the surface.

* * * * *

Protect your home with the most scientifically modern development in protective coating.

PROTECTS

WATERPROOFS

INSULATES

Self-Cleaning.

It is difficult to describe in words the outstanding qualities of this liquid-plastic finish. You really should see it to appreciate the smooth even surfaces, the tile-like hardness and finish that you get with Cello-Plastic.

When you consider that only one cost is needed—and that it is a permanent, lifetime finish—Cello Plastic is much more economical in the long run than ordinary paints or enamels.

If you can't come in to see this miracle paint^ddiscovery using real plastic solvents as its base, why not order your requirements and try it out.

Representation concerning Outside Cello-Plastic:

For weatherproof, exterior finishes covering clapboard, shingle, stucco, brick, concrete, storm and window frames. Excellent insulating value.

Cello-Plastic exterior is a combination finish and insulation because it seals and weatherproofs every inch of surface it covers . . . filling cracks . . . reconditioning weatherbeaten wood surfaces . . . and permanently beautifying it.

One coat of Cello-Plastic exterior is equivalent to 5 coats of ordinary paint . . . so it, too, is so much cheaper than ordinary paint, both in original paint costs and in labor as well.

Representations concerning Cello-Plastic Interior:

Anyone can apply it without a single trace of brushmarks. Cello-Plastic is a lifetime finish that holds its color and lustre under all condition.

One coat of Cello-Plastic interior paint resurfaces woodwork, walls, plaster, cement masonry, even old wallpaper with a sparkling, self-leveling finish that is water resistant, impervious to heat and one that will not crack, peel or chip.

Representations concerning Cello-Plastic Enamel:—

A NEW MAGIC CELLO PLASTIC ENAMEL

For Exterior and Interior Use. Finishes walls like TILE. Finishes Woodwork like PORCELAIN.

This is really it! Modern science has produced this new PLASTIC coating you apply with a brush. It actually has the same chemical properties of genuine molded plastic products.

A BRUSH-ON PLASTIC

With an ordinary brush you flow this coating on your woodwork and it dries to a smooth porcelain finish—hard, waterproof, abrasion-resistant. Colors: Snow-white, Pale Blue, Ivory, Pale Green, Buff, Peach, Cream, Dusty Rose.

You won't have to wait until after the war for this new, scientific plastic discovery. Limited quantities now available. Order at once.

PAR. 4. Through the foregoing statements and representations hereinabove set forth, and others similar thereto but not specifically set out herein, the respondent represents directly and by implication that

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his product designated "Cello-Plastic Floor Finish" produces a non-skid plastic floor finish that eliminates waxing and polishing and will outwear wax surfaces 200 to 1; that it produces a tough, bright finish which resist cigarette burns, alcohol, grease, boiling water, and lye and is an ideal preparation for wood, concrete, asphalt, tile, and in-laid linoleum, and that said product produces a cellophane-like finish.

Respondent represents directly and by implication, that his product "Cello-Plastic Waterproofed Paint" will waterproof recreation rooms, basement walls and floors; that it is a modern miracle of science; that it penetrates, waterproofs, and preserves concrete floors and all masonry inside or outside, damp or dry, painted, or unpainted.

Respondent further represents directly and by implication, that his product "Cello-Plastic Enamel" finishes walls upon which it is applied like tile, and finishes woodwork upon which it is applied like porcelain and has the same chemical properties of genuine molded plastic and dries to a smooth porcelain finish, hard, waterproof, abrasion resistant, and is a new scientific plastic discovery.

Respondent further represents directly and by implication that his product "Cello-Plastic" is a startling discovery in liquid plastics and gives both exterior and interior surfaces upon which it is applied a real plastic coating; that said product is more than just a paint; that it forms a liquid film that penetrates and clings to old surfaces; covers cracks and scratches, that said product is fadeproof, waterproof, will not crack, blister or peel on surfaces to which it is applied; that one coat of Cello-Plastic gives a permanent lifetime finish and real plastic solvents are used as its base; that it is more economical than ordinary paints or enamels; that said product leaves a porcelain-like finish; that said product has the same chemical properties, nature, consistence, and firmness as molded plastic products and is a scientifically prepared plastic coating for exterior and interior surfaces; that it insulates and makes homes treated with same cool in summer and warmer in winter; that it is waterproof and fireproof, and becomes a permanent part of the surfaces on which it is applied; that it is the most scientifically modern development in protective coating and is self-cleaning; that said product leaves a tile-like hardness and finish; that said product protects surfaces under all climatic conditions everywhere.

Respondent further represents, directly and by implication, that his product "Outside Cello-Plastic" is a combination finish and insulation that finishes, insulates, seals, and waterproofs every inch of surface to which it is applied; that it fills cracks, reconditions weather-beaten wood surfaces, and permanently beautifies said surfaces; that

one coat of said product is equal to five coats of ordinary paint and is much cheaper than ordinary paint; that said product weatherproofs exterior surfaces such as clapboard, shingles, stucco, brick, concrete, and storm and window frames; that said product possesses excellent insulating value.

Respondent further represents, directly and by implication, that one coat of his product "Inside Cello-Plastic" resurfaces woodwork, walls, plaster, cement, masonry, and old wallpaper with a self-leveling finish that is weather-resistant and impervious to heat; that said product will not crack, peel, or chip, and creates a lifetime finish that holds color and luster under all conditions.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, respondent's product "Cello-Plastic Floor Finish" is not a remarkable nonskid plastic floor finish that eliminates waxing and polishing and will not outwear wax surfaces 200 to 1 or any appreciable extent. Said product does not create a tough or bright finish and is not resistant to cigarette burns, alcohol, grease, boiling water, or lye. Said product is not an ideal preparation for wood, concrete, asphalt, tile, or inlaid linoleum and will not produce a cellophane-like finish.

Respondent's product "Cello-Plastic Waterproof Paint" will not waterproof recreation rooms, basement walls and floors, and is not an effective waterproofer under all conditions of use. Said product is not a modern miracle or invention of science. It will not effectively penetrate, waterproof, or preserve surfaces to which it is applied and cannot be used effectively on concrete and all masonry inside or outside, damp or dry, painted, or unpainted.

Respondent's product "Cello-Plastic Enamel" does not finish walls like tile or finish woodwork like porcelain. Said product does not have the same chemical properties of genuine molded plastic products and does not dry to a smooth porcelain finish; said product does not produce a hard surface and is not waterproof and is not abrasion resistant.

Respondent's product "Cello-Plastic" is not a startling discovery in liquid plastic and will not give both exterior and interior surfaces upon which it is applied a real plastic coating. Said product does not contain any more properties than ordinary paint. It does not satisfactorily penetrate and cling to old surfaces and cover cracks and scratches. Said product is not fadeproof or waterproof and will not permanently prevent blistering and peeling on surfaces to which it is applied. Said product Cello Plastic does not leave a porcelain-like finish. Said product is not more economical than ordinary paints or

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varnishes. Said product Cello-Plastic does not leave a tile-like hardness and finish on surfaces to which it is applied and one coat of said product does not give a permanent lifetime finish. Said product does not have the same chemical properties, nature, consistency, or firmness as molded plastic products and is not a scientifically prepared plastic coating for exterior and interior surfaces. It will not insulate and make homes treated with it cool in summer and warm in winter. Said product will not insulate, is not waterproof or fireproof and is not more than ordinary paints and does not become a permanent part of the surfaces on which it is applied. It is not the most scientifically modern development in protective coating and is not self-cleansing. "Cello-Plastic" will not protect surfaces under bad climatic conditions anywhere. Said product Cello-Plastic does not contain real plastic solvents as its base.

Respondent's product "Outside Cello-Plastic" is not weatherproof, does not possess insulating value. Said product is not a combination finish and insulation. Said product will not seal and weatherproof every inch of surface to which it is applied and it does not satisfactorily fill cracks, recondition weather-beaten wood surfaces, and will not permanently beautify same. One coat of said product is not equivalent to five coats of ordinary paint and is not much cheaper than ordinary paint. In truth and in fact, the true worth or value thereof does not exceed that of comparable competitive paints and enamels.

One coat of respondent's product "Inside Cello-Plastic" will not resurface woodwork, walls, plaster, cement, masonry, or old wallpaper with a sparkling self-leveling finish. It is not water-resistant or impervious to heat, and will peel and chip off from surfaces to which it is applied. Said product does not create a lifetime finish and will not hold its color or luster under all conditions.

PAR. 6. The use by respondent of the word "Chemical" in the trade designation of his business "Cello-Plastic Chemical Company" and the statement "A House of Chemical Engineers" is misleading and deceptive in that such word "Chemical" imports and implies that the business of said respondent is that of a dealer in chemical commodities and that he employs chemists who scientifically prepare the products sold by him, and conduct a thorough study of their properties and effects, whereas in truth and in fact, the respondent does not own, operate, or control a chemical plant or factory wherein his paint or varnish is produced, and does not employ chemical engineers who scientifically prepare said products or conduct a thorough study of same. The only operation performed by the respondent in connection

with his products is the packaging of said products which are manufactured by and purchased from others in bulk form.

The use by the respondent of the word "Cello-Plastic" in his trade name and in designating, describing and referring to his said products as aforesaid, is misleading and deceptive in that said products do not possess the characteristics of cellophane and are not plastics as such terms are understood by the trade and the purchasing public, but are paints, varnishes, and enamels of a type sold by many competitors of the respondent at prices substantially less than the prices secured by respondent for his said products.

PAR. 7. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said products.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 15, 1945, issued and subsequently served upon the respondent, Bertram A. Unger, an individual, trading as Cello-Plastic Chemical Co., its complaint, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The answer of the said Bertram A. Unger was filed on December 3, 1945. Thereafter, testimony and other evidence were introduced before a trial examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's answer, testimony, and other evidence, the trial examiner's recommended decision, and brief in support of the complaint (no brief having been filed on behalf of the respondent and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and

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makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Bertram A. Unger, is an individual who, for a number of years prior to 1946, traded under the name "Cello-Plastic Chemical Co." Said respondent maintained his office and principal place of business in the Park Building, located at the corner of Fifth Avenue and Smithfield Street, in the city of Pittsburgh, State of Pennsylvania. In 1946, respondent Unger caused to be incorporated under the laws of Pennsylvania a corporation known as Cello-Plastics, Inc., of which he is president, treasurer, and principal stockholder, and since the date of incorporation of said company respondent Unger's business has been conducted by and through the corporation Cello-Plastics, Inc. The office and principal place of business of said corporation is located at 417 Boulevard of the Allies, Pittsburgh, Pa.

PAR. 2. The respondent, Bertram A. Unger, trading as Cello-Plastic Chemical Co. and through the corporation, Cello-Plastics, Inc., is now, and for more than 5 years last past has been, engaged in the sale and distribution of various types of paints and related products designated "Cello-Plastic." Said respondent causes these products, when sold, to be transported from his place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a regular course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the purchase of his "Cello-Plastic" paint products, the respondent has circulated to prospective purchasers throughout the United States, by means of advertisements inserted in newspapers and magazines, and by the use of advertising folders, pamphlets, and circular letters, distributed through the United States mails, and otherwise, many statements and representations concerning said products. In the manner and for the purpose aforesaid he has represented, among other things: (a) That his "Cello-Plastic" products are the result of startling new discoveries in liquid plastics; that said products are more than just paints; that they will provide "lifetime" finishes; and that they will not crack, blister, or peel; (b) that one coat of his "Outside Cello-Plastic" is equivalent to five coats of ordinary paint; (c) that his "Inside Cello-Plastic" holds its color and

luster under all conditions; (d) that his "Cello-Plastic Enamel" has the same properties as genuine molded plastic products; (e) that his "Cello-Plastic Floor Finish" produces a tough, bright finish which resists cigarette burns, alcohol, grease, boiling water, and lye; and (f) that his "Cello-Plastic Waterproofed Paint" is a modern miracle of science.

PAR. 4. (a) The respondent throughout this proceeding has contended that the binders or nonvolatile vehicle of his paint products are composed in substantial part of one or more of the various synthetic resins commonly used in the manufacture of plastics. The record shows, however, that it is not unusual for the basic film-forming ingredients of surface coatings to be composed in whole or in part of one or more of the raw materials used in the manufacture of plastics. The protective coating industry has known and made use of such raw materials, originally in the form of natural imported resins, but more recently in the form of synthetics, for more than 25 years; and the fact that the nonvolatile vehicles in the respondent's paints may be composed in part of some of these raw materials does not render his products either materially different from or substantially better than the paint products of many of his competitors. It is not true, as the respondent has represented, that his "Cello-Plastic" products are the result of new discoveries in liquid plastics, or that said products are "more than just paints" or that any of them are "miracle" paints. Neither the respondent's products nor any other paint yet produced will provide a finish which will last for a "lifetime," and there is nothing in this record to indicate that the finish provided by the respondent's products will last for any substantial period of time over and beyond that which may be expected of the finish provided by other good quality paints. A number of witnesses testified that, contrary to the respondent's representations, his "Cello-Plastic" paints, when used on their "homes and elsewhere, would and did crack, blister, and peel.

(b) In an effort to determine the truth or falsity of the respondent's claims for his "Outside Cello-Plastic" and his "Cello-Plastic Floor Finish," representatives of the Commission submitted to the National Bureau of Standards samples of said products for testing, and the testimony of the chemists who conducted the tests and the reports of the Bureau thereon are both in the record. It appears from such testimony and reports that the respondent's "Outside Cello-Plastic," being composed of 29 percent pigment (titanium dioxide and zinc oxide), 31.2 percent volatile vehicle, and 39.8 percent nonvolatile ve-

hicle (the vehicle being a varnish-like material containing 12 percent phthalic anhydride) is substantially the same as many other good quality paints on the market, and it is obvious that one coat of said product is not equivalent to five coats, or to any multiple number of coats, of such other paints. It appears further from the reports of the Bureau of Standards that while the nonvolatile vehicle of the respondent's "Cello-Plastic Floor Finish" is composed of cellulosic and resinous matter in the approximate ratio of 1 to 2, the surfaces to which this product was applied in the tests were seriously marred, softened, or removed by burning cigarettes, alcohol, grease, hot water, and lye solutions. It is not true, therefore, as the respondent has represented, that one coat of his "Outside Cello-Plastic" is equivalent to five coats of "ordinary" paint or that his "Cello-Plastic Floor Finish" resists cigarette burns, alcohol, grease, boiling water, and lye.

(c) The chemical composition of the respondent's "Inside Cello-Plastic" was not disclosed, but there were a number of witnesses who testified that after using this product they found that it would and did fade, blister, and powder. The respondent's representations that said product will hold its color and luster under all conditions were not justified.

(d) The term "molded plastic products," mentioned in the respondent's advertising, applies generally to a large number of useful articles, such as ash trays, telephones, luggage, jewelry, and many others, which have been fashioned through application of pressure and heat to certain synthetic organic substances, some of which are derived from coal, petroleum, or wood. Depending upon the end use for which they are intended, such products may have innumerable built-in characteristics. Thus, they may be as hard as rock or as pliable as a sheet of rubber, as thin as tissue, or in solid blocks or any desired shape, transparent or opaque, and varying from the lightest pastel shade to solid or variegated dark colors. Such products may be rapid or slow burning or actually flame resistant, and may have special electrical properties and many other engineering characteristics. Obviously, the very nature and purpose of a product intended for use as a surface coating precludes the possibility of such product having these characteristics. The respondent's representations that his "Cello-Plastic Enamel" has the same properties as genuine molded plastic products cannot be supported.

(e) The Commission is of the opinion, therefore, and finds, that in the foregoing respects the respondent's advertising representations were false, misleading, and deceptive.

PAR. 5. The respondent's use of the words "Chemical Company" in his business or trade name, "Cello-Plastic Chemical Company," and of the statement "A House of Chemical Engineers" on his business stationery and elsewhere imported and implied that the business of said respondent was that of a dealer in chemicals and that he had in his employ chemical engineers who scientifically prepared the products he sold. The record shows, however, that the respondent does not and never has owned, operated, or controlled a plant in which any chemical products were produced, and that he does not have in his employ any chemical engineers. The only operation performed by the respondent in connection with the paint products sold by him consists of placing his labels upon the containers in which such products are received by the respondent from his suppliers. The implications from the respondent's use of the words "Chemical Company" in his business name and from the use of the statement "A House of Chemical Engineers" on his stationery were clearly misleading and deceptive.

PAR. 6. (a) The complaint herein listed a number of advertising statements and representations in addition to those above referred to which have been used by the respondent in promoting the sale of his products, and charged that such statements and representations were also false, deceptive, and misleading. It charged, in addition, that the use by the respondent of the term "Cello-Plastic" in his trade name and in designating his products was also misleading and deceptive. The Commission is of the opinion, however, and finds, that the charges with respect to the falsity of these additional statements and representations, and with respect to the use of the term "Cello-Plastic," have not been sustained by the greater weight of the evidence.

(b) The complaint also attacked the respondent's practice of referring to his paint products as "plastics," adopting the theory that said products are not plastics as that term is understood by the trade and the purchasing public, and the question whether or not this is so was treated by both counsel and the trial examiner as the paramount issue in the proceeding. On this phase of the case, however, the record does not present an adequate basis for a satisfactory disposition of either of the two questions involved.

(c) Concerning the question what constitutes a surface covering which may properly be referred to as a "plastic paint," the evidence discloses that there exists at the present time, both in and out of the paint industry, a sharp disagreement. One faction of the paint industry, for example, contends that a plastic paint may be properly defined as a coating whose basic film-forming ingredient is a synthetic resin, high polymer, synthetic, or modified rubber, whose film retains

the chemical and physical properties of the synthetic resin or rubber. It is contended just as strenuously by another faction of the same industry, and also by the plastic manufacturers, that a surface coating may not under any circumstances be called a plastic, and that the term "plastic" should be reserved for those materials of high molecular weight derived from synthetic resins or cellulose, esters, ethers, etc., which may be molded, cast, or calendered, and the various articles made from such materials. Chemical and plastic experts from the Bureau of Standards who testified in the case were in agreement with that faction of the paint industry whose contention it is that a paint may be properly referred to as a plastic, but they expressed the opinion that such a designation should be limited to those coverings at least 50 percent of the soluble solids of which consist of one or more of the raw materials used in the manufacture of plastics (benzylcellulose, nitrocellulose, cellulose acetate, urea-formaldehyde alkyd resin, phenolic resin, chlorinated rubber, etc.). The members of the purchasing public who were called as witnesses and who testified on this subject stated generally that to them the word "plastic" meant hard, shiny, durable, and water repellent.

(d) Even if the Commission could determine from this record the requirements for a "plastic paint," it would not be in a position to find whether or not the respondent's products, with the possible exception of "Cello-Plastic Floor Finish" meet such requirements. The record shows that one can of "Outside Cello-Plastic" and one can of "Cello-Plastic Floor Finish" were analyzed by chemists of the Bureau of Standards, and in each instance the total percentages of pigment and volatile and nonvolatile vehicles in the paints were determined. In the case of the "Outside Cello-Plastic," however, the amount or percentage of the synthetic resins, if any, in the vehicle was not determined, and, regardless of the nature of any standard that might be adopted to govern whether or not a covering is entitled to be called a "plastic paint," the question whether or not this product meets such a standard could not be answered in the absence of such a determination. As regards the composition of the other products involved, namely "Inside Cello-Plastic," "Cello-Plastic Enamel," and "Cello-Plastic Waterproofed Paint," the record is completely silent.

(e) For the reasons stated, the Commission makes no finding on the issue of whether or not the respondent's paint products may or may not properly be referred to as "plastic" paints.

PAR. 7. The use by the respondent of the false, misleading, and deceptive statements and representations referred to in paragraph 3, 4, and 5 had the tendency and capacity to mislead and deceive a sub-

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stantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations and the implications thereof were true, and the tendency and capacity to cause such portion of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of the respondent's paint products.

CONCLUSION

The acts and practices of the respondent as herein found (excluding those referred to in paragraph 6) were all of the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and written brief in support of the complaint (no brief having been filed on behalf of the respondent and oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclusion that the respondent, Bertram A. Unger, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Bertram A. Unger, individually and trading as Cello-Plastic Chemical Co., or trading under any other name, or through any corporate or other device, and said respondent's agents, representatives, and employees, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of paints and related products designated "Cello-Plastic," or any other product or products of substantially similar composition, whether sold under the same name or under any other name, do forthwith cease and desist from:

(1) Representing, directly or by implication:

(a) That any of said products are "miracle" paints, or that they differ substantially, either in composition or otherwise, from many other good quality paints on the market;

(b) That any of said products are the result of or constitute new discoveries;

(c) That any of said products will produce a "lifetime" finish or a finish that will last for any substantial period of time beyond that which may be expected from other good quality paints;

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(d) That any of said products will hold their color or luster under all conditions, or provide a finish which will resist cigarette burns, alcohol, grease, hot water, or lye;

(e) That any of said products will not crack, blister, or peel;

(f) That one coat of any of said products is equivalent to any multiple number of coats of other good quality paints or will adequately cover a surface;

(g) That any of said products have the same properties as molded plastic products.

2. Using the words "Chemical Company," or any other word or words of similar import or meaning in the respondent's trade name; or representing in any other manner that the respondent is a dealer in chemical commodities other than paints.

3. Using the words "A House of Chemical Engineers," or any other words of similar import or meaning, on letterheads, stationery, or other advertising material; or representing in any other manner that the respondent manufactures or compounds the products sold by him, unless and until he owns and operates, or directly and absolutely controls, the plant wherein said products are produced.

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

Syllabus

IN THE MATTER OF
PAUL UNGER TRADING AS CELLO-NU PRODUCTSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5392. Complaint, Oct. 15, 1945—Decision, Dec. 20, 1949*

In a proceeding in which the respondent contended, on the one hand, that the use of certain representations, which were shown to be false and misleading, had been discontinued from 2 years to 6 months before the issuance of the complaint charging the use thereof, and that, accordingly, the issuance of an order to cease and desist from their use would not be justified, contending also that each and every one of such representations was true and contained no element of falsity or deception: it was manifestly in the public interest for the Commission through the issuance of an appropriate order to prevent the continuation or resumption of the use of such representations.

The protective coating industry has known and made use of raw materials used in the manufacture of plastics for more than 25 years, and it is not unusual for the basic film forming ingredients of surface coatings to be composed in whole or in part of one or more of such raw materials.

The term "molded plastic products" applies generally to a large number of useful articles, such as ash trays, telephones, luggage, jewelry, and many others which have been fashioned through application of pressure and heat to certain synthetic organic substances, some of which are derived from coal, petroleum, or wood. Such products, depending upon the use for which they are intended, may have innumerable built-in characteristics, i. e., they may be as hard as rock or as pliable as a sheet of rubber, as thin as tissue, or in solid blocks or any desired shape, transparent or opaque, or in varying colors, inflammable, or flame resistant, etc.

Where an individual engaged in the interstate sale and distribution of various types of paints and related products designated "Plasti-Cote" and "Cello-Nu"; in advertising through folders, pamphlets, circular letters, and other material, newspapers and periodicals—

(a) Falsely represented that his "Plasti-Cote" products were "miracle" and "amazing" paints and were "more than just paints," were the result of a "new discovery" in liquid plastics, and had the same chemical properties, nature, consistency, and firmness as molded plastic products;

The facts being that the inclusion therein as claimed, in the nonvolatile vehicle of said products of synthetic resins used in plastics, did not render them either materially different from or substantially better than the paint products of many of his competitors; and as a surface coating they could not have the qualities of molded plastic products;

(b) Falsely represented that his said Plasti-Cote products would provide finishes holding their color and luster under all conditions; that one coat would cover the surface to which it was applied; that said paints flowed on smoothly, filling all cracks and surface imperfections and gave extra-durable, fade-proof, and waterproof finishes which would not crack, blister, or peel; were more than just paints, and were exceptionally economical in view of

the fact that only one coat was required to cover a surface and that it produced a permanent lifetime finish;

- (c) Falsely represented that one coat of his "Plasti-Cote Exterior" paint when applied on wood, shingle, stucco, brick, masonry, or concrete surfaces was equivalent to five coats of ordinary paint and filled all cracks and imperfections even on old weather-beaten wood surfaces, and permanently beautified the surface to which applied;

The facts being that said product did not differ substantially from many other good quality paints on the market, and one coat thereof was not the equivalent of five coats or any multiple number of coats of other ordinary paints; there are surfaces, particularly asbestos shingles, for which no paint product on the market is satisfactory; even wood surfaces must be carefully prepared in many instances before a paint may be successfully applied thereto; and in the case of old or weather-beaten surfaces, it is often impossible for any reasonable number of coats of any paint to cover all the cracks and imperfections;

- (d) Falsely represented that his "Plasti-Cote Interior" was a "miracle" paint, one coat of which filled all cracks and surface imperfections, whether applied over old paint, wall paper, rough cracked surfaces, wallboard, plaster walls, or wood, and that it would not crack, peel, or chip; and

- (e) Falsely represented that his "Cello-Nu Waterproofing" would waterproof basements, stop all water seepages, and cause the masonry components to consolidate into one single solid mass, leaving the surface to which it was applied hard and immune to destructive reactions of masonry and the elements;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce its purchase of substantial quantities of said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

As to the charge of the complaint, that respondent's use of the term "Plasti-Cote" in designating his products, and "Cello-Nu" in his trade name, was misleading and deceptive, the Commission was of the opinion and found that said charges had not been sustained by the greater weight of evidence.

With regard to the paramount issue in the proceeding, in the view of counsel and the trial examiner, namely, respondent's use of the word "plastics," in referring to his paint products, challenged by the complaint on the theory that said products are not plastics as the term is understood by the trade and the purchasing public: the record did not present an adequate basis for a satisfactory disposition of the questions involved, since—aside from a sharp disagreement both in and out of the industry as to whether and under what circumstances, a surface covering might properly be referred to as a "plastic paint"; and the opinion of experts from the Bureau of Standards that a point might be properly so referred to if the covering contained at least 50 percent of the soluble solids used in the manufacture of plastics—the analyses made in the case did not place the Commission in a position to find whether or not respondent's products met such a standard, and the

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Commission accordingly made no findings on the issue of whether or not said individual's paint products might or might not properly be referred to as "plastic" paints.

As respects other misrepresentations which the complaint charged respondent with making in connection with his "Plasti-Cote," "Plasti-Cote Exterior," "Plasti-Cote Interior," and "Plastic-Cote Transparent Floor Finish," to the effect that the particular product, as the case might be, was variously self-leveling, would not leave brush marks, would not crack in subzero weather, or soften in hot weather, would prevent corrosion or rust, would insulate the home and make it cooler in summer and warmer in winter, was scientifically formulated for outside and inside walls, etc., produced a smooth tile-like finish, was a real plastic, would not require etching or undercoating, and provided a nonskid plastic finish that banished waxing and polishing, etc., the Commission was of the opinion and found that charges with respect to the falsity of such representations had not been sustained by the greater weight of the evidence.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Melvin A. Albert, of New York City, for respondent.

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 Paul Unger, an individual trading as Cello-Nu Products, hereinafter referred to as the respondent, has 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. Paul Unger is an individual trading as Cello-Nu Products, with his office and principal place of business located at 65 East Lake Street, Chicago, Ill.

PAR. 2. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of paints and varnishes designated as "Plasti-Cote" and "Cello-Nu."

The respondent causes said products, when sold, to be transported from his said place of business in the State of Illinois to purchasers thereof located at various points in the several States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his said business and for the purpose of inducing the purchase of his products, the respondent has

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circulated and is now circulating, among prospective purchasers throughout the United States, by United States mails, by means of advertisements inserted in newspapers and magazines, and by means of advertising folders, pamphlets, circular letters, and other advertising material, all of general circulation, many false statements and representations concerning his said products. Among and typical of such false statements and representations are the following:

Representations concerning Plasti-Cote:

PLASTI-COTE!

THE MIRACLE LIQUID-PLASTIC PAINT

Plasti-Cote, a startling new discovery in liquid plastics makes it possible for you to refinish both exterior and interior with a real plastic coating with all its beauty and durability.

A LIFETIME
FINISH

REPAINT WITH
PLASTIC!

PLASTI-COTE

the amazing
Liquid-Plastic Paint

ONE COAT COVERS

The Paint of Tomorrow—Today!

Amateurs can get the same wonderful results as professional painters. Plasti-Cote is self-leveling and does not leave brush marks. Plasti-Cote flows on smoothly, filling all cracks and surface imperfections, giving an extra durable fadeproof and waterproof finish that will not crack or peel.

Plasti-Cote is more than just a paint. It is a liquid film that flows on easily, then penetrates and clings to the old surface covering cracks and scratches, leaving that "porcelain-like" finish. This new flexible plastic paint is fade-proof, waterproof and does not crack, blister or peel, and that, with Plasti-Cote's self-leveling flowability GIVES THE AMATEUR'S WORK THE PROFESSIONAL TOUCH . . . Durable, extra-beautiful, super-economical, easy-to-apply and one coat does it.

PLASTI-COTE and
Beautify your Roof

This amazing product loves exposure—will not crack in sub-zero—nor soften in hot weather. Stops corrosion and rust.

PLASTI-COTE insulates the home; makes it cool in summer and warm in winter.

PLASTI-COTE is waterproof.

PLASTI-COTE Gloss is a tile like finish for kitchen and bathroom.

PLASTI-COTE will save money because one coat covers.

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It is difficult to describe in words the outstanding qualities of this liquid-plastic finish. You really should see it to appreciate the smooth even surfaces, the tile-like hardness and finish that you get with Plasti-Cote.

Anyone can apply it without a single trace of brushmarks, Plasti-Cote is a lifetime finish that holds its color and lustre under all conditions.

Walls or woodwork refinished in Plasti-Cote clean so much easier . . . it will save you hours of hard scrubbing and cleaning every spring and fall.

When you consider that only one coat is needed—and that it is a permanent, lifetime finish—Plasti-Cote is much more economical in the long run than ordinary paints or enamels.

If you can't come in to see this miracle paint discovery using real plastic solvents as its base, why not order your requirements and try it out.

—CELLO-NU—

NOW! A NON-SKID PLASTIC FLOOR FINISH

That outwears Wax 200 to 1.

Cello-Nu eliminates the use of wax.

PLASTICS are today's wonder material . . . from Nylon hose to stretchable glass shoes, from radio panels to tropical army helmets, from "CELLOPHANE" to telephones, plastics appear in new form every day. And now, you can get it in liquid form . . . a plastic floor finish that can "take it".

No matter whether your floors are linoleum, rubber, concrete, cork or wood you can give them a sparkling beauty treatment, that makes waxing old fashioned, with an amazing new liquid "Cellophane" like Plastic finish.

Cello-Nu is wholly different from any product being used today for the maintenance of the types of floors mentioned, and is quickly applied in liquid form by anyone.

Representations concerning Plasti-Cote Exterior:

PLASTI-COTE (EXTERIOR) For Wood, Shingle, Stucco, Brick Masonry and concrete surfaces.

One coat of Plasti-Cote exterior is equivalent to 5 coats of ordinary paint. Durable, hard surface coating of Plasti-Cote is fade-proof, weather proof and water-resistant . . . also has high insulation value. Plasti-Cote covers all cracks and imperfections, even old weatherbeaten wood surfaces, leaving smooth, even surface.

Plasti-Cote exterior is a combination finish and insulation because it seals and weatherproofs every inch of surface it covers . . . filling cracks . . . reconditioning weatherbeaten wood surfaces . . . and permanently beautifying it.

One coat of Plasti-Cote exterior is equivalent to 5 coats of ordinary paint . . . so it, too, is so much cheaper than ordinary paint, both in original paint costs and in labor as well.

Exterior—One coat covers and seals clapboard, shingle, stucco, brick, masonry and concrete exteriors. Has excellent insulation value.

Scientifically Formulated.

TO DO FOUR SPECIFIC HOME PAINTING JOBS

Outside Walls Inside Walls Basement Walls Roof Covering.

Representations concerning plasti-Cote Interior:

PLASTI-COTE (INTERIOR) For Kitchen, Bath, Bedroom and Living Room. One coat of this miracle plastic-paint fills all cracks and surface imperfections—

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whether you paint over old paint, wallpaper, rough, cracked surfaces, wall-board, plastered walls or wood. Easy to apply with brush because it is self-leveling and leaves no brush marks. It will not peel, crack or chip and washes as easily as finest tile.

Write, phone or visit our offices and see this lifetime plastic-paint before you do any decorating—either inside or out. Try it—see how it covers all imperfections and leaves a smooth, tile-like finish.

One coat of Plasti-Cote Interior paint resurfaces woodwork, walls, plaster, cement, masonry, even old wallpaper with a sparkling, self-leveling finish that is water resistant, impervious to heat and one that will not crack, peel or chip.

Representations concerning Plasti-Cote Transparent Floor Paint:

Plasti-Cote Transparent Floor Finish is a real PLASTIC, a sensational improvement over every other type of finish you've ever Known.

Representations concerning Cello-Nu Waterproof Paint:

Now you can Waterproof and Beautify Your Basement with one coat of Cello-Nu Water-Proof. Can be applied over DAMP or dry surfaces.

BEAUTIFY AND WEATHERPROOF Your Basement with CELLO-NU Water-proofer Paint.

Apply this yourself when wall is wet or dry—to Concrete, Tile or Brick walls and floors. No etching or undercoats needed. Just brush this amazing water-proofer on. Dries quickly. Several attractive colors. \$7.50 per gal.

CELLO-NU WATERPROOFER locks in the alkalis—stops seepage—causes the components of masonry to consolidate into one single solid mass—prevents cracking, crumbling. The vehicle PENETRATES and leaves the surface hard and immune to destructive reactions of masonry and elements.

Representations concerning Cello-Nu Floor Finish:

Plasticize Your Floors With CELLO-NU Floor Finish.

-- remarkable non-skid plastic finish that banishes waxing and polishing. Tough, bright, resistant to cigarette burns, alcohol, grease, boiling water and even lye. Doesn't scuff.

PAR. 4. Through the foregoing statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent represents directly and by implication that his product Plasti-Cote is a miracle liquid-plastic paint; that said product is a startling new discovery in liquid plastic; that its use makes it possible to refinish both interior and exterior surfaces with a real plastic coating; that it produces a lifetime finish; that his product Plasti-Cote is an amazing liquid-plastic paint; that one coat of said product covers; that said product is self-leveling and does not leave brush marks, flows on smoothly, filling all cracks and surface imperfections, giving an extra durable, fadeproof and waterproof finish that will not crack, blister or peel; that his product Plasti-Cote is more than just a paint; that it is a liquid film that penetrates and

clings to the old surfaces, leaving a procelain-like finish; that it is a new flexible-plastic paint; that it is super-economical; that his product Plasti-Cote will not crack in subzero nor soften in hot weather; that it stops corrosion and rust; that said product insulates a home, makes it cool in summer and warm in winter; that Plasti-Cote is a tile-like finish for kitchen and bathroom; that said product will save money because one coat covers; that said product produces a tile-like hardness and finish; that said product holds its color and luster under all conditions; that surfaces refinished in said product clean much easier; that it is more economical to use than ordinary paints or enamels; that real plastic solvents are used as a base in his product Plasti-Cote; that said product has the same chemical properties, nature, consistency, and firmness as molded plastic products.

Respondent represents that one coat of his product Plasti-Cote Exterior, when applied on wood, shingle, stucco, brick, masonry and concrete surfaces, is equivalent to five coats of ordinary paint; that said product is durable, produces a hard surface, is fadeproof, weatherproof and water-resistant, possesses high insulation value, and is scientifically formulated; that said product covers all cracks and imperfections, even old weatherbeaten wood surfaces, leaving a smooth, even surface; that his product Plasti-Cote Exterior is a combination finish and insulation and permanently beautifies the surface to which it is applied; that said product is much cheaper than ordinary paint, both in original paint cost and labor.

Respondent represents that his product Plasti-Cote Interior is a miracle-plastic paint and that one coat fills all cracks and surface imperfections, whether painted over old paint, wallpaper, rough or cracked surfaces, wallboards, plastered walls, or wood; that it leaves no brushmarks and is self-leveling; that it will not peel, crack, or chip and washes as easily as finest tile, and leaves a tile-like finish; that it is water-resistant, and impervious to heat.

Respondent represents that his product Plasti-Cote Transparent Floor Finish is a real plastic and a sensational improvement over every other type of finish.

Respondent represents that one coat of his product Cello-Nu Waterproofing Paint will waterproof and beautify basements and can be applied over damp or dry surfaces; that it is weatherproof; that no etching or undercoat is needed when applied to wet or dry concrete, tile or brick walls, and floors; that said product locks in the alkalies, stops seepage, causes the component parts of masonry to which it is applied to consolidate into one single solid mass and prevents cracking and crumbling; that the vehicle or medium used in said product pene-

trates and leaves the surface hard and immune to destructive reactions of masonry and elements.

Respondent represents that his product Cello-Nu Floor Finish is a remarkable nonskid plastic finish that banishes waxing and polishing and outwears waxed surfaces 200 to 1; that it is tough, bright, and resistant to cigarette burns, alcohol, grease, boiling water, and lye; that it will not scuff, that said product is wholly different from any product being used for maintenance of linoleum, rubber, concrete, cork, or wood floors and leaves a cellophane-like plastic finish.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, respondent's product Plasti-Cote is not a miracle liquid-plastic paint; it is not a startling new discovery in liquid plastics; its use does not make it possible to refinish both interior and exterior surfaces with a real plastic coating with all the beauty and durability of genuine plastic. Said product does not produce a lifetime finish. Respondent's product Plasti-Cote is not an amazing liquid plastic paint. Respondent's product Plasti-Cote is not self-leveling and will leave brush marks. It will not fill all cracks and surface imperfections, giving an extra durable, fadeproof, and waterproof finish. It will peel and chip.

Respondent's product Plasti-Cote is nothing more than just a paint. In truth and in fact, it does not contain different ingredients or properties than similar competitive paints. It is not a liquid film that penetrates and clings to the old surface. It will not cover cracks and scratches nor leave a porcelain-like finish on surfaces to which it is applied. It is not a new flexible plastic paint nor a plastic paint. It is not fadeproof nor waterproof, and will blister and peel. It is not more economical than similar competitive paints and one coat will not satisfactorily cover. Respondent's product Plasti-Cote will crack in subzero and soften in hot weather. Said product will not stop or prevent corrosion or rust, and is not more beautiful or economical than similar competitive paints, varnishes, and enamels. In truth and fact, the true worth and value thereof does not exceed that of comparable competitive paints, varnishes, and enamels. Respondent's product Plasti-Cote will not insulate the home nor make it cooler in summer or warmer in winter. Its use will not create a smooth even surface and does not produce a tile-like hardness and finish to surfaces upon which it is applied. Respondent's product Plasti-Cote does not hold its color and luster under all conditions. Surfaces upon which respondent's product Plasti-Cote has been applied do not clean more easily than those finished with other comparable paints and varnishes, and it is not more economical to use than comparable paints

and varnishes. Said product does not contain real plastic solvents as its base. Respondent's product Plasti-Cote does not have the same chemical properties, nature, consistency, and firmness as molded plastic products.

One coat of respondent's product Plasti-Cote Exterior is not equivalent to five coats of ordinary paint for wood, shingle, stucco, brick, masonry, and concrete surfaces. Said product is not durable and does not produce a hard surface coating. It is not fadeproof, weatherproof, nor water-resistant, and possesses no insulation value. Respondent's product Plasti-Cote Exterior is not a combination finish and insulation. It will not cover all cracks and imperfections. It will not fill cracks, recondition weatherbeaten wood surfaces, and will not permanently beautify same. It is not any cheaper than ordinary comparable paint either in original paint cost or labor. One coat of respondent's product Plasti-Cote Exterior will not satisfactorily cover and seal clapboard, shingle, stucco, brick, masonry, and concrete exteriors. It is not scientifically formulated for outside and inside walls, basement walls, and roof covering.

Respondent's product Plasti-Cote is not a miracle-plastic paint nor a plastic paint. One coat of said product will not fill all cracks and surface imperfections whether painted over old paint, wallpaper, rough, cracked surfaces, wallboard, plastered walls, or wood. It is not self-leveling and will leave brush marks. Said product will peel and chip and does not wash as easily as finest tile. Said product is not a lifetime plastic paint and does not produce a smooth tile-like finish. One coat of respondent's product Plasti-Cote Interior will not satisfactorily resurface woodwork, walls, plaster, cement, masonry, old wallpaper with a sparkling self-leveling finish. It is not water-resistant nor impervious to heat.

Respondent's product Plasti-Cote Transparent Floor Finish is not a real plastic. It is not a sensational improvement over every other type of finish known.

One coat of respondent's product Cello-Nu Waterproof Paint will not waterproof basements nor can it be applied over damp surfaces. Said product will not weatherproof surfaces upon which it is applied. Said product cannot be satisfactorily applied to concrete, tile, or brick walls and floors when wet. It does require etching or undercoats. Respondent's product Cello-Nu Waterproofer does not lock in the alkalis, stop seepage, and cause component parts of masonry to which it is applied to consolidate into one single solid mass, and will not prevent cracking and crumbling. The vehicle or medium used in this

product will not penetrate and leave the surface hard and immune to destructive reactions of masonry and elements.

Respondent's product "Cello-Nu Plastic Floor Finish" is not a remarkable nonskid plastic finish that banishes waxing and polishing. It does not produce a tough, bright finish and is not resistant to cigarette burns, alcohol, grease, boiling water, or lye and will scuff up. Said product will not outwear waxed surfaces 200 to 1, or to an appreciable extent. Respondent's product Cello-Nu Plastic Floor Finish is not different from other comparable competitive products for the maintenance of linoleum, rubber, concrete, cork, or wood floors and does not have a cellophane-like plastic finish.

PAR. 6. The use by the respondent of the word "Plasti-Cote" in designating, describing, and referring to his said products as aforesaid, and of the word "Cello-Nu" in his trade name, is misleading and deceptive in that said products do not possess the characteristics of cellophane and are not plastics as such terms are understood by the trade and the purchasing public, but are paints, varnishes, and enamels of a type sold by many competitors of the respondent at prices substantially less than the prices secured by respondent for his said products.

PAR. 7. The use by the respondent of the aforesaid false, misleading and deceptive statements and representations has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase said products.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 15, 1945, issued and subsequently served upon the respondent, Paul Unger, an individual trading as Cello-Nu Products, its complaint, charging said respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of the respondent's answer, which was later amended pursuant to leave granted, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial

examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondent's amended answer, testimony and other evidence, the trial examiner's recommended decision, and brief in support of the complaint (no brief having been filed on behalf of the respondent and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Paul Unger, is an individual trading and doing business under the trade name of Cello-Nu Products, with his office and principal place of business located at 65 East Lake Street, in the city of Chicago, State of Illinois. Said respondent is now, and for more than 6 years last past has been, engaged in the sale and distribution of various types of paints and related products designated "Plasti-Cote" and "Cello-Nu."

PAR. 2. The respondent causes the aforesaid products, when sold, to be transported from his place of business in the State of Illinois to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a regular course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his business, and for the purpose of inducing the purchase of his "Plasti-Cote" and "Cello-Nu" paint products, the respondent has circulated, and is now circulating, to prospective purchasers throughout the United States, by the use of advertising folders, pamphlets, circular letters, and other material, distributed through the United States mails and by means of advertisements inserted in newspapers, magazines, and other periodicals having a general circulation, many statements and representations concerning said products. In the manner and for the purpose aforesaid, the respondent has represented, among other things; (a) That his "Plasti-Cote" products are "miracle" and "amazing" paints; that said products are the result of startling new discoveries in liquid plastics, having the same chemical properties, nature, consistency, and firmness as

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molded plastic products; that said paints will provide "lifetime" finishes, holding their color and luster under all conditions; that one coat of Plasti-Cote will cover the surface to which it is applied; that said paints flow on smoothly, filling all cracks and surface imperfections and giving extra durable, fadeproof and waterproof finishes that will not crack, blister, or peel; and that said products are more than just paints and are exceptionally economical in view of the fact that one coat is all that is required to cover a surface, and the further fact that it produces a permanent "lifetime" finish; (b) That one coat of his "Plasti-Cote Exterior" when applied on wood, shingle, stucco, brick, masonry, or concrete surfaces, is equivalent to five coats of ordinary paint; that said product fills all cracks and imperfections, even on old weather-beaten wood surfaces; and that it permanently beautifies the surface to which it is applied; (c) That his "Plasti-Cote Interior" is a "miracle" paint, one coat of which fills all cracks and surface imperfections, whether applied over old paint, wallpaper, rough, cracked surfaces, wallboard, plastered walls, or wood; and that it will not crack, peel, or chip; and (d) That his "Cello-Nu Waterproof" will waterproof basements; and that it stops all water seepages, causing the components of masonry to consolidate into one single solid mass, leaving the surface to which it is applied hard and immune to destructive reactions of masonry and the elements.

PAR. 4. (a) The respondent throughout this proceeding has contended that the binder or nonvolatile vehicles of his paint products, both those designated "Plasti-Cote" and those designated "Cello-Nu," are composed in substantial part of one or more of the various synthetic resins commonly used in the manufacture of plastics. The record shows, however, that it is not unusual for the basic film-forming ingredients of surface coatings to be composed in whole or in part of one or more of the raw materials used in the manufacture of plastics. The protective coating industry has known and used such raw materials, originally in the form of natural imported resins, but more recently in the form of synthetics, for more than 25 years; and the fact that the nonvolatile vehicle in the respondent's paints may be composed in part of some of these raw materials does not render his products either materially different from or substantially better than the paint products of many of his competitors. It is not true, as the respondent has represented, that any of his products are "more than just paints," or that they are "miracle" or "amazing" products, or that they are the result of a "new discovery" in liquid plastics.

(b) The term "molded plastic products" mentioned in the respondent's advertising applies generally to a large number of useful articles,

such as ash trays, telephones, luggage, jewelry, and many others, which have been fashioned through application of pressure and heat to certain synthetic organic substances, some of which are derived from coal, petroleum, or wood. Depending upon the end use for which they are intended, such products may have innumerable built-in characteristics. Thus, they may be as hard as rock or as pliable as a sheet of rubber, as thin as tissue, or in solid blocks, or any desired shape, transparent or opaque, and varying from the lightest pastel shade to solid or variegated dark colors. Such products may be rapid or slow-burning or actually flame-resistant, and may have special electrical properties and many other engineering characteristics. Obviously, the very nature and purpose of a product intended for use as a surface coating precludes the possibility of such product having these characteristics. The respondent's representations that his "Plasti-Cote" paints have the same properties as molded plastic products can not be supported.

(c) Contrary to the respondent's representations, "Plasti-Cote" paints, although conceded by counsel in support of the complaint to be of good quality, will not provide a finish lasting for a "lifetime," or for any other substantial period of time over and beyond that which may be expected of other good quality paints. There are many conditions, including the passage of time, variations in the weather and atmosphere, improper application of the paints, unsuitability of the surfaces to which they may be applied, and others, which will materially affect the appearance of the respondent's paints and often prevent them from holding their original color and luster. A number of witnesses testified that one coat of the respondent's product did not adequately cover the surface to which it was applied, as they were led to believe it would be the respondent's representations; and the testimony of other users was to the effect that said product failed to fill all cracks and surface imperfections and that it would and did crack, blister, and peel. Costing a purchaser approximately three times as much as comparative paints, the respondent's "Plasti-Cote" paints are not exceptionally economical, as the respondent has represented, nor will they provide a permanent fadeproof or waterproof finish.

(d) The respondent's "Plasti-Cote Exterior" does not differ substantially, either in composition or otherwise, from many other good quality paints on the market, and it is clearly apparent from this record that one coat of said product is not equivalent to five coats, or to any multiple number of coats, of other ordinary paints. Moreover, there are surfaces, particularly asbestos shingles, for which neither the respondent's paint nor any other paint product now on the market

is suitable as a satisfactory covering. Even wood surfaces must be carefully prepared in many instances before a paint may be successfully applied thereto, and in the case of old, weather-beaten surfaces it is often impossible for any reasonable number of coats of any paint, including that of the respondent, to cover all of the cracks and imperfections of such surfaces.

(e) In an effort to determine the truth or falsity of the respondent's representations concerning the product "Cello-Nu Waterproofer," representatives of the Commission submitted to the National Bureau of Standards a sample of said product for testing. The testimony of the materials engineer who conducted the test and the report of the Bureau of Standards of the test as conducted are both in the record. It appears from such testimony and report that the rate of water leakage through the brick wall on which the test was conducted was actually slightly greater after treatment of the wall with respondent's product than it was before the treatment, and the Bureau's conclusion was that the product involved is of no value whatever as a waterproofer. This product will not render brick or masonry walls or structures impermeable to water or moisture and will not stop seepages, and the respondent's representations to the contrary were all without foundation.

(f) The Commission is of the opinion, therefore, and finds, that in the foregoing respects the respondent's representations were false, misleading, and deceptive.

PAR. 5. According to the respondent's testimony, the use of certain of the representations shown to have been false and deceptive was discontinued from 6 months to 6 years before the complaint in this proceeding was issued. For this reason the respondent contends that the issuance of an order to cease and desist from the use of those representations would not be justified. The respondent also contends, however, that each and every one of such representations was true and that it contained no element of falsity or deception; and in these circumstances it is manifestly in the public interest for the Commission, through the issuance of an appropriate order, to prevent the continuation or resumption of the use of such representations.

PAR. 6. (a) The complaint herein listed a number of advertising statements and representations in addition to those above referred to which have been used by the respondent in promoting the sale of his paint products, and charged that such statements and representations were also false, deceptive, and misleading. It charged, in addition, that the use by the respondent of the term "Plasti-Cote" in designating his products and of the term "Cello-Nu" in his trade name was also

misleading and deceptive. The Commission is of the opinion, however, and finds, that the charges with respect to the falsity of these additional statements and representations, and with respect to the use of the terms "Plasti-Cote" and "Cello-Nu," have not been sustained by the greater weight of the evidence.

(b) The complaint also attacked the respondent's practice of referring to his paint products as "plastics," adopting the theory that said products are not plastics as that term is understood by the trade and the purchasing public, and the question whether or not this is so was treated by both counsel and the trial examiner as the paramount issue in the proceeding. On this phase of the case, however, the record does not present an adequate basis for a satisfactory disposition of either of the two questions involved.

(c) Concerning the question what constitutes a surface covering which may properly be referred to as a "plastic paint," the evidence discloses that there exists at the present time, both in and out of the paint industry, a sharp disagreement. One faction of the paint industry, for example, contends that a plastic paint may be properly defined as a coating whose basic film-forming ingredient is a synthetic resin, high polymer, synthetic, or modified rubber, whose film retains the chemical and physical properties of the synthetic resin or rubber. It is contended just as strenuously by another faction of the same industry, and also by the plastics manufacturers, that a surface coating may not under any circumstances be called a plastic, and that the term "plastic" should be reserved for those materials of high molecular weight derived from synthetic resins or cellulose, esters, ethers, etc., which may be molded, cast or calendered, and the various articles made from such materials. Chemical and plastic experts from the Bureau of Standards who testified in the case were in agreement with that faction of the paint industry whose contention it is that a paint may be properly referred to as a plastic, but they expressed the opinion that such a designation should be limited to those coverings at least 50 percent of the soluble solids of which consist of one or more of the raw materials used in the manufacture of plastics (benzylcellulose, nitrocellulose, cellulose acetate, urea-formaldehyde alkyd resin, phenolic resin, chlorinated rubber, etc.). The members of the purchasing public who were called as witnesses and who testified on this subject stated generally that to them the word "plastic" meant hard, shiny, durable, and water-repellant.

(d) Even if the Commission could determine from this record the requirements for a "plastic paint," it would not be in a position to find whether or not the respondent's products meet such requirements.

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The record shows that one can of "Plasti-Cote Interior" and one can of "Plasti-Cote Exterior" were analyzed by chemists of the Bureau of Standards, and in each instance the total percentages of pigment and volatile and nonvolatile vehicle in the paint were determined. In neither case, however, was the amount or percentage of synthetic resins, if any, in the vehicle of the paint determined, and, regardless of the nature of any standard that might be adopted to govern whether or not a covering is entitled to be called a "plastic paint," the question whether or not the respondent's products meet such a standard could not be answered in the absence of such a determination.

(e) For the reasons stated, the Commission makes no finding on the issue of whether or not the respondent's paint products may or may not be properly referred to as "plastic paints."

PAR. 7. The use by the respondent of the false, misleading, and deceptive statements and representations referred to in paragraphs 3 and 4 had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and the tendency and capacity to cause such portion of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of the respondent's paint products.

CONCLUSION

The acts and practices of the respondent as herein found (excluding those referred to in paragraph 6) were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondent's amended answer thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and written brief in support of the complaint (no brief having been filed on behalf of the respondent and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondent, Paul Unger, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Unger, individually and trading as Cello-Nu Products, or trading under any other name or through any

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corporate or other device, and said respondent's agents, representatives and employees, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of paints and related products designated "Plasti-Cote" and "Cello-Nu," or any other product or products of substantially similar composition, whether sold under the same name or under any other name, do forthwith cease and desist from representing, directly or by implication:

(a) That any of said products are "miracle" or "amazing" paints, or that they differ substantially, either in composition or otherwise, from many other good quality paints on the market;

(b) That any of said products are the result of or constitute new discoveries;

(c) That any of said products have the same chemical properties, natural consistency or firmness as molded plastic products;

(d) That any of said products will fill all cracks and imperfections in a surface to which they are applied, or that one coat of any of said products is equivalent to any multiple number of coats of other good quality paints, or will adequately cover the surface;

(e) That any of said products will produce a "lifetime" finish or a finish that will last for any substantial period of time beyond that which may be expected from other good quality paints;

(f) That any of said products will provide a finish which is fade-proof or waterproof, or one which will not crack, blister, or peel or which will hold its color and luster under all conditions;

(g) That any of said products will render brick or masonry walls impermeable to water or moisture, or that they will waterproof basements or stop water seepages;

(h) That any of said products will lock in the alkalis or cause the component parts of masonry to which they are applied to consolidate into one single mass;

(i) That the use of any of said products is more economical than the use of other good quality paints or enamels.

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

IN THE MATTER OF
ERVIN UNGER AND DOLORES UNGER

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5391. Complaint, Mar. 18, 1946—Decision, Dec. 20, 1949

The protective coating industry has known and made use of raw materials used in the manufacture of plastics for more than 25 years, and it is not unusual for the basic film forming ingredients of surface coatings to be composed in whole or in part of one or more of such raw materials.

Where two individuals engaged under the trade names "Cello-Nu Products," "Plasti-Cote Products," and "Plasticote Products" in the interstate sale and distribution of various types of paints and related products designated "Cello-Nu," "Plasti-Cote," and "Plasticote"; in advertising through folders, pamphlets, circular letters, and otherwise, and through newspapers and periodicals—

(a) Falsely represented that their said products were "miracle" and "amazing" paints; that one coat thereof would cover the surface to which it was applied; and that said products flowed on smoothly, filling all cracks and surface imperfections, and giving extra durable, fadeproof and waterproof finishes that would not crack, blister or peel;

The facts being that the inclusion, as claimed, in said products of synthetic resins used in the manufacture of plastic did not render them either materially different from or substantially better than the paint products of many of their competitors;

(b) Falsely represented that their "Cello-Nu," "Plasti-Cote" or "Plasticote Exterior" paint filled all cracks and imperfections on wood, concrete, brick, stucco, or any other surface, and gave lasting beauty to the surface to which applied;

The facts being that in the case of some surfaces, including particularly asbestos shingles, no present paint is satisfactory; even wood surfaces must be carefully prepared in many instances before a paint may be successfully applied thereto; and in the case of old, and weather-beaten surfaces it is often impossible for any reasonable number of coats of any paint to cover all the cracks and imperfections; and

(c) Falsely represented that their "Cello-Nu," "Plasti-Cote," and "Plasticote Basement Paint" would waterproof basements;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce its purchase of substantial quantities of their said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce.

As to charge of the complaint that respondents' use of the terms "Plasti-Cote" and "Plasticote, a liquid plastic," in designating their products, and of the term "Plasti-Cote" in their trade name, was misleading and deceptive, the

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Commission was of the opinion and found that said charges had not been sustained by the greater weight of the evidence.

With regard to the paramount issue in the proceeding, in the view of counsel and the trial examiner, namely, respondents' use of the word "plastics" in referring to his paint products, challenged by the complaint on the theory that said products are not plastics as the term is understood by the trade and the purchasing public, the record did not present an adequate basis for a satisfactory disposition of the questions involved, since—aside from a sharp disagreement both in and out of the industry as to whether and under what circumstances a surface covering might properly be referred to as a "plastic paint"; and the opinion of the experts from the Bureau of Standards that a paint might be properly so referred to if the covering contained at least 50 percent of the soluble solids comprising one or more of the raw materials used in the manufacture of plastics—the Commission, even assuming that it could determine from the instant record the requirements for a "plastic paint," was not in a position to find whether or not respondents' products met such requirements, since, insofar as the actual composition thereof was concerned, the record was completely silent; and the Commission accordingly made no findings on said issue as to whether or not the respondents' paint products might or might not be properly referred to as "plastic paints."

As respects other misrepresentations which the complaint in said proceeding charged respondents with making in connection with their "Perma Plastic," "Perma Plastic Exterior," "Interior," and "Finisher," and their "Cello-Nu," including their "Interior," and "Exterior," and their "Plasti-Cote" and "Plasticote" to the effect that the particular product, as the case might be, left a smooth tile-like finish, made waxing obsolete, would outwear wax two hundred to one, produced a hard surface coating, was self-leveling, waxed as easily as finest tile, remained elastic, expanding and contracting with changing weather conditions, protected against summer heat and winter cold, did not require undercoats, etc.; the Commission was of the opinion and found that such charges with respect to the falsity of such representations had not been sustained by the greater weight of the evidence.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Melvin A. Albert, of New York City, for respondents.

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 Ervin Unger, an individual trading as Perma Plastic Products and as a copartner with Dolores Unger, an individual trading as Cello Nu Products, Plasti-Cote Products, and Plasticote Products, and Dolores Unger, individually and as a copartner with Ervin Unger trading as Cello Nu Products, Plasti-Cote Products, and Plasticote Products, hereinafter re-

ferred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that 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. Ervin Unger is an individual trading as Perma Plastic Products with his offices and principal place of business located at 905 South 5th Street, Philadelphia, Pa., formerly located at 1138 Schofield Building, Cleveland, Ohio.

PAR. 2. The respondent Ervin Unger is now and for more than 1 year last past has been engaged in the sale and distribution of paints and varnishes designated Perma Plastic coatings, Perma Transparent, Perma Tile Finish, and Perma Tile Floor Finish. Said respondent Ervin Unger is also engaged in business as a copartner with respondent Dolores Unger as hereinafter alleged.

PAR. 3. Respondent Dolores Unger is an individual trading as Cello Nu Products, Plasti-Cote Products, and Plasticote Products with their offices and principal places of business located at 905 South Fifth Street and 1906 Market Street, Philadelphia, Pa., with branch offices in Chicago, Ill.; New York, N. Y.; Newark, N. J.; Cincinnati, Ohio; Omaha, Nebr.; and Boston, Mass.

The respondents Ervin Unger and Dolores Unger are now and for more than 1 year last past have been engaged in the sale and distribution of paints and varnishes designated Cello Nu and Plasti-Cote.

PAR. 4. The respondents cause their said products, when sold by them, to be transported from their aforesaid places of business in the States of Illinois, Pennsylvania, New York, New Jersey, Ohio, Nebraska, and Massachusetts to purchasers thereof located at various points in the several States of the United States other than the States of Illinois, New York, Ohio, Nebraska, and Massachusetts and in the District of Columbia.

Said respondents maintain and at all times mentioned herein have maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. In the course and conduct of his said business and for the purpose of inducing the purchase of his said products the respondent Ervin Unger trading as Perma Plastic Products has circulated among prospective purchasers through the United States mails, by advertisements, inserted in newspapers, magazines, by means of advertising pamphlets, booklets, circulars, labels, and other advertising matter

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all in general circulation, many false statements and representations concerning his said products; among and typical of such false statements and representations are the following:

Representations concerning Perma Plastic:

PERMA PLASTIC

The New Miracle Liquid-Plastic Coating—A Lifetime Finish.

PERMA PLASTIC, a startling new discovery in liquid plastics, makes it possible for you to refinish both exterior and interior with a real plastic coating with all its beauty and durability.

PERMA PLASTIC Weather-proof insulating exterior finishes.

See how it covers all imperfections and leaves a smooth, tile-like finish.

Now You Can Waterproof, Beautify Your Basement.

Can be applied to Concrete, Tile, Brick, etc., Floors and Walls DAMP or painted; No Etching; No Seepage; No Costly Undercoats.

PERMA PLASTIC WATERPROOF

PERMA PLASTIC

THE AMAZING LIQUID PLASTIC PAINT

The one-coat paint that amateurs apply with PROFESSIONAL results . . . Durable, hard surface coating.

PLASTIC

PAINT

IS HERE!

Plastics bring you Perma Plastic Paint. Dries with hard tile-like finish. Will last through the years. One coat covers all.

This radically new laboratory product.

No matter whether your floors are linoleum, rubber, concrete, cork or wood, you can give them a sparkling beauty treatment with an amazing new Liquid Cellophane Like Plastic finish that makes waxing old-fashioned.

Eliminates Waxing and Polishing.

PERMA PLASTIC is wholly different from any product being used today for maintenance of the types of floors mentioned above, and is quickly applied in liquid form by anyone.

THE MIRACLE LIQUID
PLASTIC PAINT

ONE COAT COVERS
EASY TO APPLY

Amateurs can get the same results as professional painters.

NOW: A NON-SKID PLASTIC FLOOR FINISH. That outwears wax 200 to 1.

RESISTS Cigarette Burns, Alcohol, Boiling Water, Uric Acid, Scratches, etc.

Plastics are today's wonder materials . . . from Nylon hose to stretchable "glass" shoes, from radio panels to tropical army helmets, from Cellophane to telephones, plastics appear in new forms every day. And now, you can get it in liquid form . . . a plastic floor finish that can "take it".

PERMA PLASTIC
PENETRATES WATERPROOFS PRESERVES
\$8.95 Gallon.

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Causes a chemical reaction that solidifies the various component parts of masonry into one single solid mass—stops dusting, cracking, crumbling. Locks in all Alkalies and Lime and prevents seepage.

\$6.95 Gallon

TILE-LIKE FINISH

Representations concerning Perma Plastic (Exterior):

One coat of Perma Plastic exterior paint is equivalent to 5 coats of ordinary paint. Durable, hard surface, coating of Perma Plastic is fade-proof, weather-proof and water-resistant. Perma Plastic covers all cracks and imperfections, even old weatherbeaten wood surfaces, leaving smooth, even surfaces.

See this lifetime plastic paint before you do any decorating—either inside or out.

Representations concerning Perma Plastic (Interior):

One coat of this miracle plastic-paint fills all cracks and surface imperfections—whether you paint over old paint, wallpaper, rough, cracked surfaces, wallboard, plastered walls or wood. Easy to apply with brush because it is self-leveling and leaves no brush marks. It will not peel, crack or chip and washes as easily as finest tile.

Representations concerning Perma Plastic Waterproofer:

PERMA PLASTIC WATERPROOFER
WATERPROOFS PENETRATES PRESERVES

The vehicle PENETRATES and leaves the surface hard and immune to destructive reactions of masonry and elements.

Representations concerning Perma Plastic Finish:

PERMA COTE
YOUR FLOORS
With Perma Plastic Finish

Non-skid finish that banishes waxing and polishing. Tough, bright, resistant to alcohol, grease, boiling water and even lye.

PAR. 6. Through the foregoing statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent Ervin Unger represents, directly and by implication, that his product Perma Plastic is a miracle liquid plastic, that said product produces a lifetime finish and is a startling new discovery in liquid plastics; that the use of said product makes it possible to refinish both interior and exterior surfaces with a real plastic coating; that his said product Perma Plastic is weatherproof and insulates exterior finishes and produces a smooth tile-like finish; that Perma Plastic will waterproof basements, can be applied to concrete, tile, brick, and other floors and walls, damp or painted, and requires no etching or undercoats and creates no seepage; that his product Perma Plastic is an amazing liquid plastic paint; that said product is durable and produces a hard surface coating and dries to a hard tile-like finish

and lasts for years; that one coat of said product covers; that Perma Plastic is a new laboratory product and wholly different from any product being used for maintenance of linoleum, rubber, concrete, cork, or wood floors; that it leaves a cellophane-like plastic finish to surfaces on which it is applied; that its use makes waxing obsolete and eliminates waxing and polishing; that said product is nonskid and resists cigarette burns, alcohol, boiling water, uric acid, scratches, and other substances; that it outwears wax 200 to 1; that his product Perma Plastic has the same chemical properties, materials, consistency, and firmness as molded plastic products; that said product penetrates, waterproofs, and preserves surfaces upon which it is applied and causes the said component parts of masonry to which it is applied to consolidate or solidify into one single and solid mass and stops dusting, cracking, crumbling, and locks in all alkalies and lime and prevents seepage.

Respondent Ervin Unger further represents, directly and by implication, that one coat of his product Perma Plastic exterior paint is equivalent to five coats of ordinary paint; that it is a durable hard-surface coating, fadeproof, weatherproof, and water-resistant; that his said product Perma Plastic exterior paint covers all cracks and imperfections, even old weather-beaten wood surfaces, leaving a smooth, even surface; that it is a lifetime plastic paint.

Respondent Ervin Unger further represents that one coat of his product Perma Plastic interior paint fills all cracks and surface imperfections, whether painted or old paint, wallpaper, rough-cracked surfaces, wallboard, plastered walls, or wood, and is self-leveling and leaves no brush marks; that said product will not peel, crack, or chip and washes as easily as finest tile; that it is a miracle plastic paint.

Respondent Ervin Unger further represents, directly and by implication, that his product Perma Plastic Waterproofer is waterproof; that said product penetrates and preserves surfaces upon which it is applied, and that the vehicle or medium used in said product leaves the surface hard and immune to destructive reactions of masonry and elements.

Respondent Ervin Unger represents, directly and by inference, that his product Perma Plastic Finish is a nonskid finish and banishes waxing and polishing and produces a tough, bright finish; that said product is resistant to alcohol, grease, boiling water, and even lye.

PAR. 7. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, respondent's product Perma Plastic is not a miracle liquid plastic coating. Said product does not produce a lifetime finish; it is not a startling new discovery

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in liquid plastic and does not make it possible to refinish both exterior and interior surfaces with a real plastic coating. Said product is not weatherproof and has no insulating value. It does not leave a smooth tile-like finish. Said product cannot be satisfactorily applied to concrete, tile brick, and other floors and walls when damp or painted and will not waterproof basements. Said product does require etching and undercoats and does not prevent seepage. It is not an amazing liquid plastic paint, and does not last for years. Said product is not durable and is not a new laboratory product. Said product is not different from other comparable competitive products being used today for maintenance of linoleum, rubber, concrete, cork, or wood and other floors and walls. Said product does not produce a cellophane-like plastic finish to surfaces to which it is applied. It does not make waxing obsolete or eliminate waxing and polishing. Said product does not create a nonskid plastic floor finish and is not resistant to cigarette burns, alcohol, boiling water, uric acid, scratches, and other substances. It will not outwear 200 to 1 or any other appreciable extent. Respondent's said product Perma Plastic does not have the same chemical properties, material consistency and firmness as molded plastic products and it will not penetrate, waterproof, or preserve surfaces upon which it is applied nor cause the component parts of masonry to which it is applied to consolidate or solidify into one single solid mass and does not stop dusting, cracking, crumbling, and will not lock in all alkalis and lime and does not prevent seepage.

One coat of respondent's product Perma Plastic exterior paint is not equivalent to five coats of ordinary paint. It is not durable, does not produce a hard-surface coating. It is not fadeproof, weatherproof or water-resistant. Said product does not cover all cracks and imperfections, including weather-beaten wood surfaces, and does not leave a smooth, even surface. It is not a lifetime plastic paint or a plastic paint.

One coat of respondent's product Perma Plastic interior paint does not satisfactorily fill all cracks and surface imperfections whether painted over old paint, wallpaper, rough-cracked surfaces, wallboard, plastered walls, or wood. Said product is not self-leveling and leaves brush marks. It will peel and chip and does not wash as easily as finest tile.

Respondent Ervin Unger's product Perma Plastic Waterproofer will not waterproof, penetrate, or preserve surfaces upon which it is applied. The vehicle or medium used in said product will not penetrate and will not leave the surface upon which it is applied hard and immune to destructive reactions of masonry and the elements.

Respondent Ervin Unger's product Perma Plastic Finish does not create a nonskid finish and does not eliminate waxing or polishing of said surfaces upon which it is applied. It does not produce a tough, bright finish and is not resistant to alcohol, grease, boiling water, and lye.

Respondent Ervin Unger's products designated Perma Plastic are nothing more than just a paint. In truth and in fact, said products do not contain any different ingredients or properties than similar competitive paints.

PAR. 8. In the course and conduct of their said business the respondents Ervin Unger and Dolores Unger trading as Cello Nu Products, Plasti-Cote Products, and Plasticote Products, and for the purpose of inducing the purchase of their products, the respondents have circulated among prospective purchasers throughout the United States mails, by advertisements inserted in newspapers, magazines, by means of advertising, pamphlets, booklets, circulars, labels, and other advertising matter, all in general circulation, many false statements and representations concerning their said products. Among and typical of such false statements and representations are the following:

Representations concerning Cello Nu :

The synthetic resin base paint of tomorrow.

Cello Nu plastic coating, hard, smooth, flexible, tile-like finish, covers over cracks, scratches and blemishes with one coat.

One coat covers! EXTERIOR does not dry out brittle but remains elastic to expand and contract with changing weather conditions. One coat covers wood, concrete, brick, stucco, any surface. Seals cracks and splits. Protects against summer heat, winter cold and moisture, dry rot, dirt, fumes and moisture cannot penetrate. Gives lasting beauty and protection.

INTERIOR. Beautifies walls and woodwork. One coat makes them so much easier to keep clean. Hard, smooth tile-like finish.

FLOORS get a remarkable cellophane-like, non-skid finish that banishes wax and polish, ideal for all surfaces. Resistant to cigarette burns, alcohol, boiling water, even lye.

WATERPROOFS and beautifies basements, makes them dry, cozy, colorful. No priming needed, no costly undercoat. Easy to apply on damp or dry surfaces.

REPAINT YOUR CAR. One coat covers your old finish, gives luxurious new car beauty that will stand rigorous treatment. One quart covers the average car, \$2.95 quart.

Finishes walls like tile, woodwork like porcelain.

Representations concerning Plasti-Cote :

The synthetic resin base paint of tomorrow.

Hard, smooth, flexible, tile-like finish.

One coat covers! EXTERIOR does not dry out brittle but remains elastic to expand and contract with changing weather conditions. One coat covers wood, concrete, brick, stucco, any surface. Seals cracks and splits. Protects against

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summer heat, winter cold and moisture, dry rot, dirt, fumes and moisture cannot penetrate. Gives lasting beauty and protection.

INTERIOR. Beautifies walls and woodwork. One coat makes them so much easier to keep clean. Hard, smooth tile-like finish.

FLOORS get a remarkable cellophane-like, non-skid finish that banishes wax and polish, ideal for all surfaces. Resistant to cigarette burns, alcohol, boiling water, even lye.

WATERPROOFS and beautifies basements, makes them dry, cozy, colorful. No priming needed, no costly undercoat. Easy to apply on damp or dry surfaces.

REPAINT YOUR CAR. One coat covers your old finish, gives luxurious new car beauty that will stand rigorous treatment. One quart covers the average car, \$2.95 quart.

Finishes walls like tile, woodwork like porcelain.

Plasti-Cote AAA, the amazing liquid plastic paint. Plasti-Cote is more than just a paint. It is a real liquid plastic base. Does not crack, blister or peel.

PAR. 9. Through the foregoing statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents Ervin Unger and Dolores Unger, directly and by implication, represent that their product Cello Nu is a synthetic resin-base paint; that it is a plastic coating; that said product produces a hard, smooth, flexible tile-like finish that covers over cracks, scratches, and blemishes with one coat; that their product Cello Nu Exterior does not dry out brittle but remains elastic and expands and contracts with changing weather conditions; that one coat covers wood, concrete, brick, stucco, or any surface; that it seals cracks and splits; that it protects against summer heat, winter cold, and moisture and dry rot; that dirt, fumes, and moisture cannot penetrate surfaces upon which it is applied; that it gives lasting beauty and protection; that their product Cello Nu Interior beautifies walls and woodwork; that one coat makes them much easier to keep clean; that its use produces a hard, smooth, tile-like finish; that their products Cello Nu when used on exterior surfaces does not dry out brittle, but remains elastic to expand and contract with changing weather conditions; that their product Cello Nu when used on interior surfaces does not dry out brittle but remains elastic to expand and contract with changing weather conditions; that the use of their product Cello Nu on floors creates a remarkable cellophane-like appearance and a nonskid finish; that its use banishes waxing and polishing; that it is ideal for all surfaces; that said product resists cigarette burns, alcohol, boiling water and lye; that their product Cello Nu is waterproof and waterproofs basements, making them dry; that it can be applied on damp or dry surfaces and requires no undercoating; that one coat of their product Cello Nu covers the old finish on automo-

biles and creates a luxurious new car beauty that will withstand rigorous treatment.

PAR. 10. Through the foregoing statements and representations hereinabove set forth and others similarly thereto not specifically set out herein, the respondents Ervin Unger and Dolores Unger, trading as Plasti-Cote Products and Plasticote Products, represent that their products Plasti-Cote and Plasticote produce a hard, smooth, flexible tile-like finish that covers over cracks, scratches, and blemishes with one coat; that their products Plasti-Cote and Plasticote do not dry out brittle but remain elastic and expand and contract with changing weather conditions; that one coat covers wood, concrete, brick, stucco, or any surface; that it seals cracks and splits; that it protects against summer heat, winter cold, and moisture and dry rot; that dirt, fumes, and moisture cannot penetrate surfaces upon which it is applied; that it gives lasting beauty and protection; that their products Plasti-Cote and Plasticote beautify walls and woodwork; that one coat makes them much easier to keep clean; that its use produces a hard, smooth, tile-like finish; that their products Plasti-Cote and Plasticote, when used on exterior surfaces, do not dry out brittle but remain elastic to expand and contract with changing weather conditions; that their products Plasti-Cote and Plasticote when used on interior surfaces do not dry out brittle but remain elastic to expand and contract with changing weather conditions; that the use of their products Plasti-Cote and Plasticote on floors creates a remarkable cellophane-like appearance and a nonskid finish; that its use banishes waxing and polishing; that it is ideal for all surfaces; that said products resist cigarette burns, alcohol, boiling water, and lye; that their products Plasti-Cote and Plasticote are waterproof and will waterproof basements, making them dry; that it can be applied on damp or dry surfaces and requires no undercoating; that one coat of their products Plasti-Cote and Plasticote will cover the old finish on automobiles and create a luxurious new car beauty that will withstand rigorous treatment; that it is an amazing liquid paint; that it is more than just a paint.

PAR. 11. The foregoing statements and representations concerning Cello Nu, Plasti-Cote, and Plasticote are false, misleading, and deceptive. In truth and in fact, the respondents' products Cello Nu and Plasti-Cote are not synthetic resin-base paint or plastic coatings. The use of said products does not create a hard, smooth, flexible, tile-like finish; said products do not cover over cracks, scratches, and blemishes by the application of one coat. Respondents' said products, when used

on exterior surfaces do dry out brittle and do not remain elastic, do not expand and contract with changing weather conditions. One coat will not satisfactory cover wood, concrete, brick, stucco, or any other surface; does not seal cracks and splits; does not protect against summer heat, winter cold, and moisture or dry rot; dirt, fumes, and moisture can penetrate surfaces upon which they are applied. Respondents' said products when used on interior surfaces do not create a hard, smooth, tile-like finish. Said products when applied to floors do not create a cellophane-like appearance or a nonskid or slipproof condition on said floors. The use of said products does not eliminate waxing and polishing of the surfaces to which they are applied. Said products are not ideal or satisfactory for all surfaces. Said products are not resistant to alcohol, cigarette burns, boiling water, or lye. Said products are not waterproof and do not waterproof basements or make them dry. Said products do require undercoats. Said products cannot be satisfactorily applied to floors and walls when damp. One coat of said products will not satisfactorily cover old automobile finish nor give automobiles a luxurious new car appearance and will not withstand rigorous treatment. Said products are not different from other comparable competitive products sold as paints being used today.

PAR. 12. The use by the respondent Ervin Unger of the words "Perma Plastic" in designating, describing, and referring to his said product, and of the words "Perma Plastic" in his trade name, and the use by the respondents Ervin Unger and Dolores Unger of the words "Plasti-Cote" and "Plasti-Cote, a Liquid Plastic" in designating, describing, and referring to their said products Cello Nu and Plasti-Cote, and of the words "Plasti-Cote" in their trade name is misleading and deceptive in that said products are not plastics as such term is understood by the trade and the purchasing public, but are ordinary paints and varnishes of the same type and composition as sold by many competitors of the respondents at prices substantially less than the prices secured by respondents for their said products. The purchasing public's understanding of the word "plastic" when applied to plastic coatings is that the product so designated is something new and different and partakes of the same nature and character as molded plastic products, and when used, creates a permanent condition on the surfaces to which it is applied, and when used, it is not necessary thereafter to ever again apply it to the surfaces to which said product has been applied.

PAR. 13. Respondents' products Perma Plastics, Plasti-Cote and Cello Nu may contain some of the ingredients, such as resins, cellulose,

cellulose nitrate, or other ingredients, which may be used in the manufacture of plastic compositions for molding, laminating, and casting. They are not remarkable new laboratory discoveries, and do not contain new ingredients or other ingredients that are not found in other high-class paints, varnishes, or lacquers, which have contained the various ingredients used in respondents' said products for many years and have been sold and are now sold as paints, varnishes, or lacquers. Said products are not plastics or liquid plastics as these terms are understood by the public.

PAR. 14. The use by the respondents of the aforesaid false, and misleading, and deceptive representations and statements has had now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and thus induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase said products.

PAR. 15. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 18, 1946, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondent's joint answer to said complaint was filed on June 10, 1946. At a hearing convened on May 25, 1948, before a trial examiner of the Commission a stipulation was entered into by and between counsel in support of the complaint and counsel for the respondents in which it was agreed that the testimony and other evidence in support of and in opposition to the complaint in the Commission's proceeding against Paul Unger, individually and trading as Cello-Nu Products, Docket No. 5392, may be taken as the evidence in support of and in opposition to the complaint in this proceeding, that the Commission may proceed upon said testimony and other evidence to make its findings as to the facts and enter its order disposing of this proceeding, and that insofar as the findings as to the facts and order disposing of Docket No. 5392 are applicable herein, the Commission may enter in this proceeding the same findings and

order as those entered in said Docket No. 5392.¹ Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer thereto, certain exhibits and the testimony and other evidence in the matter of Paul Unger, individually and trading as Cello-Nu Products, Docket No. 5392 (no briefs having been filed and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Ervin Unger and Dolores Unger, are individuals trading and doing business under the trade name of Cello-Nu Products, Plasti-Cote Products, and Plasticote Products, with their office and principal place of business located at 905 South Fifth Street, in the city of Philadelphia, State of Pennsylvania. Said respondents formerly maintained their office and place of business at 1138 Schofield Building, Cleveland, Ohio. The respondents are now and for a number of years have been, engaged in the sale and distribution of various types of paints and related products designated "Cello-Nu," "Plasti-Cote," and "Plasticote."

PAR. 2. The respondents cause the aforesaid products, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have maintained, a regular course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the purchase of their "Cello-Nu," "Plasti-Cote," and "Plasticote" paint products, the respondents have circulated to prospective purchasers throughout the United States, by the use of advertising folders, pamphlets, circular letters, and other material, distributed through the United States mails, and by means of advertisements inserted in newspapers, magazines and other periodicals having a general circulation, many statements and representations concerning said products. In the manner and for the purpose aforesaid, the respondents have represented, among other things: (a) That their products designated "Cello-Nu," "Plasti-Cote," or "Plasticote"

¹ See *ante*, p. 279.

are "miracle" and "amazing" paints; that one coat of said products will cover the surface to which it is applied; and that said products flow on smoothly, filling all cracks and surface imperfections, and giving extra-durable fadeproof and waterproof finishes that will not crack, blister, or peel; (b) that their "Cello-Nu," "Plasti-Cote," or "Plasticote" Exterior paint fills all cracks and imperfections on wood, concrete, brick, stucco, or any other surface; and that it gives lasting beauty to the surface to which it is applied; and (c) that their "Cello-Nu," "Plasti-Cote," or "Plasticote" Basement paint will waterproof basements.

PAR. 4. (a) The respondents throughout this proceeding have contended that the binders or nonvolatile vehicles of their products designated "Cello-Nu," "Plasti-Cote," and "Plasticote" are composed in substantial part of one or more of the various synthetic resins commonly used in the manufacture of plastics. The record shows, however, that it is not unusual for the basic film-forming ingredients of surface coatings to be composed in whole or in part of one or more of the raw materials used in the manufacture of plastics. The protective-coating industry has known and used such raw materials, originally in the form of natural imported resins, but more recently in the form of synthetics, for more than 25 years; and the fact that the nonvolatile vehicles in the respondent's paints may be composed in part of some of these raw materials does not render their products either materially different from or substantially better than the paint products of many of their competitors. It is not true, as the respondents have represented, that any of their products are "miracle" or "amazing" paints, or that they are the result of a "new discovery" in liquid plastics.

(b) The respondents' paint products do not differ substantially, either in composition or otherwise, from many other good-quality paints on the market, and, as in the case of other paints, there are many conditions, including the passage of time, improper application of the paints, unsuitability of the surfaces to which they may be applied, and others, which will materially affect the appearance of the respondents' products and often prevent them from holding their original color and luster. A number of witnesses testified that one coat of said paints did not adequately cover the surface to which it was applied, as they were led to believe it would by the respondents' representations; and the testimony of other users was to the effect that the products failed to fill all cracks and surface imperfections, and that the paints would and did fade, crack, blister, and peel.

(c) The record shows that there are surfaces, particularly asbestos shingles, for which neither the respondents' paints nor any other paint product now on the market is suitable as a satisfactory covering. Even wood surfaces must be carefully prepared in many instances before a paint may be successfully applied thereto, and in the case of old, weather-beaten surfaces it is often impossible for any reasonable number of coats of any paint, including the respondents' Exterior paint, to cover all of the cracks and imperfections in such surfaces.

(d) The respondents' "Cello-Nu," "Plasti-Cote," or "Plasticote" Basement paint is of no value whatever as a waterproofer, and, contrary to the respondents' representations it will not render brick or masonry walls impermeable to water or stop leaks.

(e) The Commission is of the opinion, therefore, and finds, that in the foregoing respects the respondents' representations were false, misleading, and deceptive.

PAR. 5. (a) The complaint herein listed a number of advertising statements and representations in addition to those above referred to which have been used by the respondents in promoting the sale of their paint products, and charged that such statements and representations were also false, deceptive, and misleading. It charged, in addition, that the use by the respondents of the terms "Plasti-Cote" and "Plasti-Cote, a Liquid Plastic," in designating their products, and of the term "Plasti-Cote" in their trade name was also misleading and deceptive. The Commission is of the opinion, however, and finds, that the charges with respect to the falsity of these additional statements and representations, and with respect to the use of the terms "Plasti-Cote" and "Plastic-Cote, a Liquid Plastic," have not been sustained by the greater weight of the evidence.

(b) The complaint also attacked the respondents' practice of referring to their paint products as "plastics," adopting the theory that said products are not plastics as that term is understood by the trade and the purchasing public, and the question whether or not this is so was treated by both counsel and the trial examiner as the paramount issue in the proceeding. On this phase of the case, however, the record does not present an adequate basis for a satisfactory disposition of either of the two questions involved.

(c) Concerning the question of what constitutes a surface covering which may properly be referred to as a "plastic paint," the evidence discloses that there exists at the present time, both in and out of the paint industry, a sharp disagreement. One faction of the paint industry, for example, contends that a plastic paint may be properly

defined as a coating whose basic film-forming ingredient is a synthetic resin, high polymer, synthetic or modified rubber, whose film retains the chemical and physical properties of the synthetic resin or rubber. It is contended just as strenuously by another faction of the same industry, and also by the plastics manufacturers, that a surface coating may not under any circumstances be called a plastic, and that the term "plastic" should be reserved for those materials of high molecular weight derived from synthetic resins or cellulose, esters, ethers, etc., which may be molded, cast, or calendered, and the various articles made from such materials. Chemical and plastic experts from the Bureau of Standards who testified in the case were in agreement with that faction of the paint industry whose contention it is that a paint may be properly referred to as a plastic, but they expressed the opinion that such a designation should be limited to those coverings at least 50 percent of the soluble solids of which consist of one or more of the raw materials used in the manufacture of plastics (benzylcellulose, nitrocellulose, cellulose acetate, urea-formaldehyde alkyd resin, phenolic resin, chlorinated rubber, etc.). The members of the purchasing public who were called as witnesses and who testified on this subject stated generally that to them the word "plastic" meant hard, shiny, durable, and water-repellent.

(*d*) Even if the Commission could determine from this record the requirements for a "plastic paint," it would not be in a position to find whether or not the respondents' products meet such requirements. Insofar as the actual composition of the products are concerned, the record is completely silent.

(*e*) For the reasons stated, the Commission makes no finding on the issue of whether or not the respondents' paint products may or may not be properly referred to as "plastic paints."

PAR. 6. The use by the respondents of the false, misleading, and deceptive statements and representations referred to in paragraphs 3 and 4 had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true, and the tendency and capacity to cause such portion of the public, because of such erroneous and mistaken belief, to purchase substantial quantities of the respondents' paint products.

CONCLUSION

The acts and practices of the respondent as herein found (excluding those referred to in paragraph 5) were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices

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in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer thereto, certain exhibits, and the testimony and other evidence introduced before a trial examiner of the Commission in the matter of Paul Unger, individually and trading as Cello-Nu Products, which said testimony and evidence were taken as the evidence in support of and in opposition to the complaint in this proceeding pursuant to a stipulation entered into by and between counsel herein (no briefs having been filed and oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclusion that the respondents, Ervin Unger and Dolores Unger, have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Ervin Unger and Dolores Unger, individually and trading as Cello-Nu Products, Plasti-Cote Products, or Plasticote Products, or trading under any other name or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of paints and related products designated "Cello-Nu," "Plasti-Cote," and "Plasticote," or any other product or products of substantially similar composition, whether sold under the same names or under any other names, do forthwith cease and desist from representing, directly or by implication:

(a) That any of said products are "miracle" or "amazing" paints, or that they differ substantially, either in composition or otherwise, from many other good quality paints on the market;

(b) That any of said products will fill all cracks and imperfections in a surface to which they are applied, or that one coat of any of said products will adequately cover a surface;

(c) That any of said products will produce a finish which is fade-proof or waterproof, or one which will not crack, blister, or peel;

(d) That any of said products will render brick or masonry walls impermeable to water or moisture, or that they will waterproof basements.

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