

IN THE MATTER OF

GEORGE W. BRENNER AND JOHN M. KURTZ, DOING
BUSINESS AS PATENT SPECIALTIES COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4336. Complaint, Oct. 9, 1940—Decision, Dec. 18, 1940*

Where two individuals engaged in manufacture of their Magic Wand Welder and of their Super Magic Wand Welder, and in interstate sale thereof; in advertising their said devices through trade publications and circulars—

- (a) Represented that their said Magic Wand Welder was a heavy-duty welder which was of practical use in shop welding and a device which would generate sufficient heat when connected with an automobile storage battery to prepare materials for welding, facts being it was not such a heavy-duty device, but was light and flimsy in construction and would not, connected to such a battery, generate sufficient heat when used according to instructions to prepare any material for proper welding; and
- (b) Represented that their said Super Magic Wand Welder was a tool built for use and useful for heavy-duty in welding base metals of all kinds, and more particularly, cylinder blocks and heavy parts of mechanical and farm machinery, and that it would heat such metals to such an extent so that they would run and a proper weld could be effected, and that its construction was sturdy enough to withstand such hard use and electric current necessary for such welding, facts being it was not a heavy-duty tool, but was very flimsy and weakly constructed, wires were small gauge and easily overheated, and clamps were light weight with cheap, inferior fasteners, and it was not built for heavy electric welding, was not compact and efficient, and heat generated thereby was insufficient, except on extremely thin metals and not over $\frac{1}{16}$ of an inch in thickness, to do satisfactory welding job;
- (c) Represented, furthermore, that said Super Magic Wand Welder conformed in design and construction to standard required for such devices, and was safe to operate on ordinary AC or DC branch household circuit, and that operation thereof would not injure either operator or branch electric current to which attached, and that it was a safe and efficient device to use in securing a "sun tan" on the skin, facts being register units were poorly housed and not securely fastened to wood ends of case; tubes leading from handles were of light, inferior material and not insulated for safety to operator; and in other respects it did not conform to standard methods of design or construction of electric devices from viewpoint of suitability of materials or proper guarding and spacing of live electrical parts, so as reasonably to safeguard life and property; flimsy construction thereof made it difficult to safeguard operator from shock; use thereof would in fact necessitate special wiring; it was extremely dangerous both to anyone using it and to wiring of any ordinary house circuit to which it might be attached, and could not be operated with safety; wiring supplied therewith was too light to prevent dangerous heating, and while flame produced by carbon arc of device would burn the skin and produce so-

called "sun tan," such use by novice in use of violet rays, with no further instructions, might result in severe injury to eyes and skin; and

- (d) Represented that they would give each purchaser of their said Magic Wand welding device a full kit of welding supplies "free," facts being kit of such supplies represented by them as being "free" with each purchase was not thus given and as a gratuity, but was regularly offered as part of a combination offer and price thereof included in original sale price quoted in the advertisements;

With effect of misleading and deceiving substantial portion of purchasing public into mistaken and erroneous belief that such false and misleading representations and implications were true, and of causing substantial portion of such public, because of said belief, to purchase their said devices:

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.

Mr. Clark Nichols for the Commission.

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 George W. Brenner and John M. Kurtz, individuals, trading and doing business under the firm name of Patent Specialties Co., 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 are individuals trading and doing business under the firm name Patent Specialties Co., with their principal office and place of business at 1060 Julia Street, Teaneck, N. J. Respondents are now and for more than 2 years last past have been engaged in the manufacture and sale of two devices, one known as the Magic Wand Welder and the other known as the Super Magic Wand Welder, designed and intended to be used in welding different kinds of metals, using electric current as the heating agency. Respondents cause said devices, when sold, to be transported from their place of business in the State of New Jersey to purchasers thereof located at various points in the several States of the United States and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said devices in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business in said commerce as aforesaid, and for the purpose of inducing the purchase of their

electric welders, respondents have circulated among prospective purchasers of said devices, through advertisements placed in trade publications and advertisements in the form of circulars, many statements concerning the efficiency and merits of the said devices. Among the statements so used and circulated among the prospective purchasers by the respondents with reference to the Magic Wand Welder are the following:

"MAGIC WAND" Genuine heavy duty! Electric arc Welder. Free! Full kit! \$1.49. Service for life.

WELD—Don't solder! A welded job stays. That's why the Magic Wand Welder is so popular. Pays for itself on the first two or three jobs! Clip to auto circuit or any storage battery. Easily adapted to house current. Guaranteed for life! Welds all metals in all forms. *Rugged*, fool proof, yet finely balanced . . . the perfect instrument for man, woman or boy. Practical for home tinkering or shop production. Beware of imitations! This is not a substitute for welding. This IS Welding! Dealers! Inventors! Garage men! **INVESTIGATE!**

FREE—With every purchase of Magic Wand Lifetime Welder. Full kit of welding supplies including steel, bronze and aluminum welding rods, all necessary welding flux, high grade welding carbons, instruction booklet and numerous money making ideas (welding jobs pay up to \$1.00 an inch) to multiply your trivial investment a thousand fold! All for \$1.49 . . . rush your order today!

NOW—Throw away the soldering iron! Anyone can do a professional welding job with the *Magic Wand*. Can be clipped fast directly to your automobile circuit, operates on any storage battery, or easily adapted to your house current. Welds all metals in any form! Magic Wand Welder is guaranteed for life! *Rugged*, fool proof, yet finely balanced . . . the perfect instrument for man or boy. Practical for home tinkering or shop production. Beware of imitations! This is not a substitute for welding. This is welding! Dealers! Inventors! Garage men! Investigate!

Among the statements so used and circulated among prospective purchasers with reference to the Super Magic Wand Welder are the following:

The **"Super MAGIC WAND WELDER"** for house current! Complete only \$2.98 with full supplies.

WELDING. Most sensational tool in 20 years, *Super Magic Wand Welder* weighs only one pound, fits pocket, easy to handle! No generator, no transformer, no batteries, no special wiring! Plug into ANY LIGHT SOCKET! Handle remains cool! With this rugged heavy duty tool anyone can weld iron, steel, bronze, brass, lead, aluminum, or ANY metal, under the terrific electric flame. Use this marvel **WELDER** three different ways! First and foremost, it welds all metals! two extra uses—as a brilliant photographic flood light—to give a 'sun tan' for the skin!

FREE! With every Super Magic Wand Welder you get kit of welding supplies. Bronze, steel and aluminum welding rods; welding flux, pair of genuine "protectosite" glareproof goggles, instruction papers, and money making ideas! All complete for \$2.98. Satisfaction guaranteed or money refunded immediately.

WELDING—Brazing and soldering on AC or DC house current. Super Magic Wand Welder is a heavy-duty tool built for easy electric welding, brazing and

soldering. Just plug in on any AC or DC house current socket. Light, compact, efficient! No generator, no transformer, no batteries, no special wiring! Anyone can weld iron, steel, bronze, brass, lead, aluminum, any metal! Cylinder-blocks, fenders, tanks, farm machinery, or any type of job. WELD ANY METAL IN SHOP OR HOME. Only \$5.98—with WELDER you get FREE kit of supplies—bronze, steel, aluminum welding rods; welding flux, genuine welding goggles! Also complete instructions and money-making ideas.

Through the use of the foregoing statements and others of similar import and meaning not herein set out, the respondents represent and imply that the Magic Wand Welder is a genuine heavy-duty device which will, when connected with an ordinary automobile storage battery, weld all base metals in any form, and that it is practical for such use in home tinkering and shop production; that respondents give each purchaser of said device a full kit of welding supplies free, and as a gratuity.

Through the use of the foregoing statements, and others of similar import and meaning, not herein set out, the respondents represent and imply that the Super Magic Wand Welder is a tool built for use and useful for heavy duty in welding base metals of all kinds, and more particularly cylinder blocks and heavy parts of mechanical or farm machinery; that it will heat such metals to such an extent that they will run so that a proper weld can be effected; that its construction is sturdy enough to withstand such hard use and the electric current necessary for such welding; that it conforms in design and construction to the standard required for such devices; that it is safe to operate on an ordinary AC or DC branch electric household circuit; that the operation of such device will not injure the operator or the branch electric current to which it is attached; that it is a safe and efficient device to use in securing a "sun tan" on the skin.

PAR. 3. The above and foregoing representations and implications relative to the Magic Wand Welder are false, misleading, and deceptive, for in truth and in fact such welder is not a heavy-duty device but on the contrary is light and flimsy of construction and will not, when connected to an automobile storage battery, generate sufficient heat when used according to instructions to prepare any metal for proper welding. The kit of welding supplies represented by the respondents as being "free," with each purchase of said device, is not given "free" and as a gratuity, but is part of the combination offer, and the price thereof is included in the original sale price of \$1.49.

The above and foregoing representations and implications relative to the Super Magic Wand Welder are false, misleading, and decep-

tive, for in truth and in fact said device is not a heavy-duty welding tool, but on the contrary is very flimsy and weak in construction—the wires being of small gauge and easily overheated, the clamps of light weight connected with cheap, inferior fasteners; the resister units are poorly housed and not securely fastened to the wood ends of the case; the tubes leading from the handles are of light, inferior materials and are not insulated for safety to operators; the screw holes in the handles are so thin that a screw will not remain permanently therein so as securely to hold the electrodes. Said device does not conform to the standard methods of design or construction of electrical devices from the viewpoint of suitability of materials used or proper guarding and spacing of live electrical parts so as reasonably to safeguard life and property. Said device is not built for heavy electric welding, nor is it compact or efficient. Because of its flimsy construction it does not safeguard the operator from shock. The heat generated is insufficient, except on extremely thin materials, not over $\frac{1}{16}$ of an inch in thickness, to do a good job of welding. Its use does necessitate special wiring, the wiring supplied with the outfit being too light to prevent dangerous heating. It is extremely dangerous, both to the user and to the wiring of any ordinary house circuit, and it cannot be operated with safety. While the flame produced by the carbon arc would burn the skin and produce so-called “sun tan,” such use by a novice in the use of the violet ray, with no further instructions, might result in severe injury to the eyes and skin.

PAR. 4. The use by the respondents of the foregoing false and misleading representations and implications, respecting their said devices as to the efficiency, construction, and safety of operation thereof, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and implications are true, and causes a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said devices.

PAR. 5. 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 the 9th day of October 1940, issued, and subsequently served, its complaint in this proceeding upon the

respondents, George W. Brenner and John M. Kurtz, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 29, 1940, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, 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, George W. Brenner and John M. Kurtz, are individuals trading and doing business under the firm name of Patent Specialties Co., with their principal office and place of business at 4020 Tenth Avenue, New York, N. Y. Respondents are now, and for more than two years last past have been, engaged in the manufacture and sale of two devices, one known as the Magic Wand Welder and one known as the Super Magic Wand Welder, designed and intended to be used in welding different kinds of metals, using electric current as the heating agency. Respondents cause said devices, when sold, to be transported from their place of business in the State of New York to purchasers thereof located at various points in the several States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business in said commerce as aforesaid, and for the purpose of inducing the purchase of their electric welders, the respondents have circulated among prospective purchasers of said devices, through advertisements placed in trade publications and advertisements in the form of circulars, many statements concerning the efficiency and merits of said devices. Among these statements so used and circulated among the prospective purchasers by the respondents with reference to the "Magic Wand" welding device are the following:

"MAGIC WAND" Genuine heavy duty! Electric arc welder. Free! Full kit! \$1.49. Service for life.

WELD—Don't solder! A welded job stays. That's why the Maagic Wand Welder is so popular. Pays for itself on the first two or three jobs! Clip to auto circuit or any storage battery. Easily adapted to house current. Guaranteed for life! Welds all metals in all forms. *Rugged*, fool proof, yet finely balanced * * * the perfect instrument for man, woman or boy. Practical for home tinkering or shop production. Beware of imitations! This is not a substitute for welding. This is Welding! Dealers! Inventors! Garage men! INVESTIGATE!

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FREE—With every purchase of Magic Wand Lifetime Welder. Full kit of welding supplies including steel, bronze and aluminum welding rods, all necessary welding flux, high grade welding carbons, instruction booklet and numerous money making ideas (welding jobs pay up to \$1.00 an inch) to multiply your trivial investment a thousand fold! All for \$1.49 * * * rush your order today!

Now—Throw away the soldering iron! Anyone can do a professional welding job with the *Magic Wand*. Can be clipped fast directly to your automobile circuit, operates on any storage battery, are easily adapted to your house current. Welds all metals in any form! Magic Wand Welder is guaranteed for life! *Rugged*, fool proof, yet finally balanced * * * the perfect instrument for man or boy. Practical for home tinkering or shop production. Beware of imitations! This is not a substitute for welding. This is welding! Dealers! Inventors! Garage men! Investigate!

Among the statements so used and circulated among prospective purchasers with reference to the "Super Magic Wand" welding device are the following:

The "SUPER MAGIC WAND WELDER" for house current! Complete only \$2.98 with full supplies.

WELDING. Most sensational tool in 20 years, Super Magic Wand Welder weighs only one pound, fits pocket, easy to handle! No generator, no transformer, no batteries, no special wiring! Plug into ANY LIGHT SOCKET! Handle remains cool! With this rugged heavy duty tool anyone can weld iron, steel, bronze, brass, lead, aluminum, or ANY metal, under the terrific electric flame. Use this marvel WELDER three different ways! First and foremost, it welds all metals! Two extra uses—as a brilliant photographic flood light—to give a "sun tan" for the skin.

FREE! With every Super Magic Wand Welder you get kit of welding supplies. Bronze, steel and aluminum welding rods; welding flux, pair of genuine "protectosite" glareproof goggles, instruction papers, and money making ideas! All complete for \$2.98. Satisfaction guaranteed or money refunded immediately.

WELDING—Brazing and soldering on AC or DC house current. Super Magic Wand Welder is a heavy-duty tool built for easy electric welding, brazing and soldering. Just plug in on any AC or DC house current socket. Light, compact, efficient! No generator, no transformer, no batteries, no special wiring! Anyone can weld iron, steel, bronze, brass, lead, aluminum, any metal! Cylinder-blocks, fenders, tanks, farm machinery or any type of job. WELD ANY METAL IN SHOP OR HOME. Only \$5.98—With WELDER you get FREE kit of supplies—bronze, steel, aluminum welding rods; welding flux, genuine welding goggles! Also complete instructions and money-making ideas.

Through the use of the foregoing statements the respondents represent and imply that the "Magic Wand" welding device is a "genuine" heavy-duty device which will, when connected with an ordinary automobile storage battery, weld all base metals in any form, and that it is practical for such use in home tinkering and shop production; that respondents give each purchaser of said device a full kit of welding supplies "Free," and as a gratuity.

Through the use of the foregoing statements the respondents represent and imply that the "Super Magic Wand" device is a tool built for use and useful for heavy duty in welding base metals of all kinds, and more particularly, cylinder blocks and heavy parts of mechanical and farm machinery; that it will heat such metals to such an extent that they will run so that a proper weld can be effected; that its construction is sturdy enough to withstand such hard use and the electric current necessary for such welding; that it conforms in design and construction to the standard required for such device; that it is safe to operate on an ordinary AC or DC branch electric household circuit; that the operation of such device will not injure either the operator or the branch electric current to which it is attached; that it is a safe and efficient device to use in securing a "sun tan" on the skin.

PAR. 3. The above and foregoing representations and implications relative to the "Magic Wand" welding device are false, misleading, and deceptive, for in truth and in fact, said welder is not a heavy-duty device, but, on the contrary, is light and flimsy of construction and will not, when connected to an automobile storage battery, generate sufficient heat, when used according to instructions, to prepare any material for proper welding. The kit of welding supplies represented by the respondents as being "free" with each purchase of said device is not given free and as a gratuity, but is regularly offered as a part of a combination offer, and the price thereof is included in the original sale price quoted in the advertisements.

The above and foregoing representations and implications relative to the "Super Magic Wand" welding device are false, misleading, and deceptive, for in truth and in fact, it is not a heavy-duty tool; on the contrary, it is very flimsy and weakly constructed, the wires being small gauge and easily overheated, the clamps being light weight with cheap, inferior fasteners. The register units are poorly housed and not securely fastened to the wood ends of the case, the tubes leading from the handles being of light, inferior material, not insulated for safety to operators, and the screw holes in the handles are so thin that a screw will not remain permanently so as to securely hold the electrodes. It does not conform to standard methods of design or construction of electrical devices from the viewpoint of suitability of materials nor proper guarding and spacing of live electrical parts so as to reasonably safeguard life and property. It is not built for heavy electric welding, nor is it compact and efficient; because of its flimsy construction it is difficult to safeguard the operator from shock, and the heat generated is insufficient, except on extremely thin metals, not over 1/16 of an inch in thickness, to do a satisfactory job of welding. Its use does necessitate special wiring and the wiring supplied

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with the outfit is too light to prevent dangerous heating. It is extremely dangerous both to anyone using it and to the wiring of any ordinary house circuit to which it might be attached, and it cannot be operated with safety. While the flame produced by the carbon arc of this device would burn the skin and produce so-called "sun tan," such use by a novice in the use of violet rays, with no further instructions, might result in severe injury to the eyes and skin.

PAR. 4. The use by the respondents of the foregoing false and misleading representations and implications respecting their said devices has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and implications are true, and causes a substantial portion of the purchasing public, because of said mistaken and erroneous belief, to purchase said devices.

CONCLUSION

The acts and practices of the 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 and the answer of respondents, in which answer respondents admit all material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that respondents have violated the Federal Trade Commission Act.

It is ordered, That the respondents, George W. Brenner and John M. Kurtz, their representatives, agents, and employees, jointly and severally, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of the electric welding devices now known as and sold under the name "Magic Wand Welder" and "Super Magic Wand Welder," whether sold under said names, or any other names or name, or in connection with the offering for sale, sale, and distribution of any other welding device of similar construction, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That said "Magic Wand" welder is a heavy-duty welder, which is of practical use in shop welding.

2. That said "Magic Wand" welder will generate sufficient heat, when connected with an automobile storage battery, to prepare materials for welding.

3. That said "Super Magic Wand" welder conforms to the standard method of design or construction for electrical devices, either as to the suitability of materials used or as to the proper guarding and spacing of "live" electric parts.

4. That said "Super Magic Wand" welder is a heavy-duty welder or that it is useful in welding heavy mechanical and farm machinery, such as cylinder blocks.

5. That said "Super Magic Wand" welder may be used on ordinary alternating or direct branch electrical household circuits, without injury either to the operator of the welder or to the household circuit to which it is attached.

6. That said "Super Magic Wand" welder may be used with safety and efficiency in "sun tanning" the skin.

7. That welding supplies, offered regularly as part of a combination offer, are free or a gift or gratuity.

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.

IN THE MATTER OF
AUGUSTA KNITTING CORPORATION

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

Docket 4162. Complaint, June 13, 1940—Decision, Dec. 19, 1940

Where a corporation engaged in manufacture of tuck stitch garments, sweaters, underwear, bathing suits, and other knitted garments and in interstate distribution and sale thereof to various wholesale and retail dealer-purchasers—

- (a) Represented, as typical of acts and practices engaged in, that certain ladies' undergarments, were composed of mixture of silk and wool through labels, tags, and markers attached thereto, and including label reading "50% SILK AND WOOL," or so reading, but with figures 27 percent under words "Silk and Wool," facts being word "and" on labels in question was printed in minute type and in such manner as to be illegible to all practical intents and purposes, notation 27 percent appearing underneath words "Silk and Wool" in second label was in much smaller type than the "50%" appearing above said words, and was contradictory to label itself and would not be noticeable to purchasing public or understood by it, and knitted undergarments thus labeled were not composed entirely of silk and wool, but contained cotton content ranging from 45 percent to 50 percent;
- (b) Represented that its garments had longer wearing qualities than those knit by its competitors through use, as typical, of such labels "Self-reinforced for 97% longer wear" and "97% Longer Wear," facts being said undergarments did not have longer wearing qualities than garments of equivalent price and quality sold by competitors, and use, as aforesaid, of such statements and representations was false, deceptive and misleading; and
- (c) Failed to disclose by appropriate labels, brands, or tags attached to said garments all of fiber constituents from which they were made and to disclose as substantial constituent thereof, existence of cotton;

With result that through said labels members of purchasing public were misled into believing that said undergarments, thus labeled, were composed entirely of silk and wool in the proportion of 50 percent silk and 50 percent wool, and with effect, through use by it of representations above set forth, of misleading and deceiving substantial portion of purchasing public into erroneous belief that (1) knitted garments sold and distributed by it were composed entirely of silk and wool, fabrics of which have established reputation as possessing superior cold-resistance and other desirable qualities over those containing substantial amounts of cotton, and, as consequence are decidedly preferred by many purchasers and prospective purchasers of undergarments over fabrics containing cotton in substantial amounts, and that (2) said garments were of longer wearing quality than similar products made by competitors, and to cause said portion of public to purchase such products as result of said erroneous beliefs, engendered as above set forth:

Held, That said 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.

Mr. Robert Mathis, Jr., for the Commission.

Mr. Thomas L. Wilder, of Utica, N. Y., for respondent.