

IN THE MATTER OF
THE PERFECT MANUFACTURING COMPANY, TRADING
AND DOING BUSINESS AS THE SO-LO WORKS

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

Docket 4856. Complaint, Oct. 16, 1942—Decision, Nov. 6, 1946

Where a corporation engaged in the manufacture and interstate sale and distribution of a product designated "So-Luminum," sold for repairing aluminum and other kitchen-ware, to jobbers, retailers, and other purchasers; through advertisements in newspapers and trade journals, and in advertising folders, pamphlets, circular letters, and other advertising media—

- (a) Falsely represented that it was the largest manufacturer of menders in the world;
- (b) Falsely represented that its product would withstand heat of a direct flame of 2,000° F.; and
- (c) Falsely represented that an article repaired with its said So-Luminum was equivalent to a new or unused article; and

Where said corporation, to procure the services of salesmen and distributors to sell its said product; through advertisements in newspapers, periodicals, and other publications and in circulars, letters, pamphlets, and other advertising literature, directly and by implication—

- (d) Falsely represented that its product was to be heavily advertised in local newspapers;
- (e) Falsely represented that prospective salesmen, distributors, dealers and other representatives, might, without qualification, expect to make certain specified profits or earnings, through such statements as "Did you earn \$7 or \$14 today—or any day since you received my letter? * * * But I do know that you can make such an income by supplying the demand for So-Luminum in your territory;"

When in fact such salesmen, etc., could not, without qualification, expect to make said profits or earnings;

- (f) Falsely represented that its wholesale price list was confidential, special, or restricted to a number or class of purchasers; and
- (g) Falsely represented that with the purchase of a certain amount of its product an additional amount thereof would be given free;

When in fact the cost of its product offered as "free" was included in the purchase price of other merchandise purchased, and the so-called "free offer" was nothing more nor less than a combination offer:

With tendency and capacity to mislead and deceive members of the purchasing public into the mistaken belief that such statements and representations were true, whereby they were induced to purchase substantial quantities of its said So-Luminum:

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.

In a proceeding in which respondent was charged with falsely and misleadingly misrepresenting, among other things, in connection with the offer and sale of its So-Luminum product for repairing aluminum and other kitchenware,

that said product was the only plastic mender that repaired aluminum without heat or electricity, and in which the two witnesses who testified stated that they did not know or were not familiar with any other plastic mender that repaired aluminum without heat or electricity, the Commission was of the opinion, based upon such negative testimony, that the record was not sufficient to warrant a definite finding either that there was or was not any other plastic mender which would repair aluminum without heat or electricity, and to that extent considered such charge of the complaint as not having been sustained by the record.

The Commission, in a proceeding in which respondent was charged, among other things, with falsely and misleadingly representing that its said So-Luminum mender was not a cement, was of the opinion that the testimony with reference to whether or not said product was a cement was not conclusive in the absence of an analysis of the product and information as to its content, and that consequently the charge in the complaint with reference to said representation was not sustained by the greater weight of the evidence.

As respects the alleged false and misleading representation in a proceeding to the effect that a mend made with respondent's So-Luminum would last the life of a pan, the Commission was of the opinion that the evidence with respect to said charge was not conclusive, and that while the mend would deteriorate during continued use of the pan, the testimony and other evidence were not sufficient to permit a determination as to whether the mend would or would not last the life of the pan to which it was applied, and that, to that extent, said charge of the complaint was not sustained.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Paxton & Seasongood, of Cincinnati, Ohio, 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 the Perfect Manufacturing Co., a corporation 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. Respondent, the Perfect Manufacturing Co., is a corporation organized and existing under the laws of the State of Ohio, having its office and principal place of business at 3317 Madison Road, Cincinnati, Ohio, and trading and doing business as the So-Lo Works.

PAR. 2. The respondent is now, and for some time last past has been, engaged in the manufacture of an adhesive cement designated So-Luminum and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 3. In the course and conduct of its business respondent has caused said adhesive cement, designated So-Luminum, when sold, to be transported from its aforesaid place of business in the State of Ohio to jobbers, retail dealers, and other purchasers thereof located in various other 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 the said adhesive cement in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, as aforesaid, and for the purpose of inducing the purchase of its adhesive cement, the respondent has been, and is now, engaged in falsely representing its said adhesive cement through false, deceptive and misleading representations disseminated by advertisements inserted in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets and other advertising literature.

Among and typical of such false, misleading and deceptive statements and representations so made and disseminated as aforesaid are the following:

The world's largest manufacturers of menders * * *.

The only plastic mender that repairs aluminum without heat or electricity!

Stands 2,000° heat—Boiling water * * * No other Plastic Metal Mender can make this claim * * *.

Makes a safe, permanent, air-tight mend that withstands the heat of boiling water and direct flame.

Not a cement.

Not like anything else in the world.

Because So-Luminum is a necessity product that has no competition.

Guaranteed to last the life of the article mended.

Mend aluminum pots and pans like new * * *.

PAR. 5. Through the use of aforesaid statements and representations and others similar thereto not specifically set out herein, respondent has represented directly and by implication that it is the largest manufacturer of adhesive cement in the world; that So-Luminum is the only adhesive cement which will repair aluminum without heat or electricity; that its adhesive cement will withstand the heat of a direct flame or 2,000° F.; that no other adhesive cement can withstand the heat of boiling water; that its product is not a cement, is not like anything else in the world and is not a competitive product; that its product will effect a permanent mend or repair or a mend or repair capable of enduring for the life of the article mended without regard to the nature of the article repaired and the use to which it might be put; that an article repaired with this product will be like new.

PAR. 6. The foregoing statements and representations used and dis-

seminated in District of Columbia

seminated by respondent in the manner aforesaid are false, misleading and deceptive. In truth and in fact respondent is not the largest manufacturer of adhesive cements in the world. So-Luminum is not the only adhesive cement that will repair aluminum without heat or electricity. Respondent's adhesive cement will not withstand the heat of a direct flame or 2,000° F. Other adhesive cements can withstand the heat of boiling water. Respondent's adhesive cement may be classified as a cement and is a competitive product. There are other products used for the same or similar purposes. Respondent's product will not effect a permanent mend or repair or a mend or repair capable of enduring for the life of the article mended without regard to the nature of the article repaired and the use to which it may be put. An article repaired with respondent's adhesive cement is not the equivalent of a new or unused article.

PAR. 7. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said adhesive cement, respondent has been, and is now, engaged in falsely representing its said adhesive cement to prospective salesmen, distributors, dealers and other representatives through false, deceptive and misleading representations disseminated by advertisements inserted in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets and other advertising literature.

Among and typical of such false, misleading and deceptive statements and representations so made and disseminated as aforesaid are the following:

To be heavily advertised. Local newspaper—advertisements * *.

Did you earn \$7 or \$14 today—or any day since you received my letter? * * * But I do know that you can make such an income by supplying the demand for So-Luminum in your territory.

Confidential wholesale price lists.

Quantity ordered	Free Goods	Your Cost	Sell for
20 cans	4 cans	\$12.00	\$24.00
Your Profit			
100%			

PAR. 8. Through the use of the aforesaid statements and representations and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that its product was to be heavily advertised in local newspapers; that prospective salesmen, distributors, dealers and other representatives may without qualification expect to make certain specified profits or earnings; that its wholesale price list is confidential, special, or restricted to a limited number or class of purchasers; that with the purchase of a certain amount of its product an additional amount of its product will be given free.

and the Commission having duly considered the matter and being

PAR. 9. The foregoing statements and representations used and disseminated by respondent in the manner aforesaid are false, misleading and deceptive. In truth and in fact respondent's adhesive cement has not been heavily advertised in local newspapers. Prospective salesmen, distributors, dealers and other representatives may not without qualification expect to make certain specified profits or earnings. Respondent's wholesale price list is not confidential, special or restricted to a limited number or class of purchasers. The cost of respondent's adhesive cement offered as "free" is included in the purchase price of other merchandise purchased. The so-called "free" offer is nothing more or less than a combination offer.

PAR. 10. The use by the respondent of the aforesaid false and misleading statements and representations disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and members of the purchasing public have been and are induced to purchase substantial quantities of respondent's adhesive cement because of such erroneous and mistaken belief.

PAR. 11. 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 16, 1942, issued and subsequently served its complaint in this proceeding upon the respondent, the Perfect Manufacturing Co., a corporation, trading and doing business as The So-Lo Works, and now known as So-Lo Works, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of the answer of the respondent thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were taken before a trial examiner of the Commission theretofore duly designated by it, and said 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 said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence, and briefs filed in support of the complaint and in opposition thereto (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. Respondent, formerly the Perfect Manufacturing Co., trading and doing business as The So-Lo Works, is now known as So-Lo Works, Inc., and is a corporation organized and existing under the laws of the State of Ohio, having its office and principal place of business at Loveland, Ohio.

PAR. 2. The respondent is now, and for some time last past has been, engaged in the manufacture and in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of a product designated "So-Luminum," sold for repairing aluminum and other kitchenware.

PAR. 3. In the course and conduct of its business, respondent has caused said product, designated "So-Luminum," when sold, to be transported from its aforesaid place of business in the State of Ohio to jobbers, retail dealers, and other purchasers thereof located in various other 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 product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its product, So-Luminum, the respondent has made false, deceptive, and misleading statements and representations concerning its said product in advertisements in newspapers and trade journals and in advertising folders, pamphlets, circular letters, and other advertising media. Among and typical of the false, misleading and deceptive statements and representations disseminated in such advertising are the following:

1. That respondent is the largest manufacturer of menders in the world.

2. That respondent's product will withstand heat of a direct flame of 2,000° F.

3. That an article repaired with respondent's product, So-Luminum, is equivalent to a new or unused article.

PAR. 5. In truth and in fact, the respondent is not the largest manufacturer of menders in the world. Its product, So-Luminum, will not withstand heat of direct flame of 2,000° F. An article repaired with respondent's product is not equivalent to a new or unused article.

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PAR. 6. In addition to the above representations, the respondent has also represented that its product, So-Luminum, is the only plastic mender that repairs aluminum without heat or electricity, that it is not a cement, and that a mend made with said product will last for the life of the article mended. While these representations have been charged in the complaint as being false and misleading, the Commission is of the opinion that the testimony and other evidence are not sufficient to sustain such charges. The two witnesses who testified in this proceeding stated that they did not know or were not familiar with any other plastic mender that repairs aluminum without heat or electricity. Based upon such negative testimony the Commission is of the opinion that the record is not sufficient to warrant a definite finding either that there is or is not any other plastic mender which will repair aluminum without heat or electricity, and to this extent it considers this charge of the complaint as not having been sustained by the record. The Commission is further of the opinion that the testimony with reference to whether or not respondent's product, So-Luminum, is a cement is not conclusive in the absence of an analysis of the product and information as to its content. Consequently, the charge in the complaint with reference to this representation has not been sustained by the greater weight of the evidence. With reference to the charge that a mend made with respondent's product will last the life of a pan, the Commission is of the opinion that the evidence as to this is not conclusive and that while the mend will deteriorate during continued use of the pan, the testimony and other evidence are not sufficient to permit a determination as to whether the mend will or will not last the life of the pan to which it is applied. To this extent, this charge of the complaint has not been sustained.

PAR. 7. In addition to the acts and practices hereinabove described, the respondent, in the course and conduct of its business and for the purpose of procuring the services of salesmen and distributors to sell its said product, So-Luminum, has caused various statements and representations relative to the earnings of salesmen and distributors and relative to respondent's sales plan and conditions of sale to be inserted in advertisements in newspapers, periodicals, and other publications and in circulars, letters, pamphlets, and other advertising literature. Among and typical of said statements and representations are the following:

To be heavily advertised. Local newspaper—advertisements * * *

Did you earn \$7 or \$14 today—or any day since you received my letter?

* * * But I do know that you can make such an income by supplying the demand for So-Luminum in your territory.

Confidential wholesale price lists.

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Quantity ordered	Free Goods	Your Cost
20 cans	4 cans	\$12.00
Sell for	Your Profit	
\$24.00	100%.	

PAR. 8. Through the use of the aforesaid statements and representations, respondent has represented directly and by implication that its product was to be heavily advertised in local newspapers; that prospective salesmen, distributors, dealers, and other representatives might, without qualification, expect to make certain specified profits or earnings; that its wholesale price list is confidential, special, or restricted to a number or class of purchasers; and that with the purchase of a certain amount of its product an additional amount of its product will be given free.

PAR. 9. The foregoing statements and representations used and disseminated by the respondent in the manner aforesaid were false, misleading, and deceptive. In truth and in fact, respondent's product, So-Luminum, has not been heavily advertised in local newspapers. Prospective salesmen, distributors, dealers, and other representatives could not, without qualification, expect to make certain specified profits or earnings. Respondent's wholesale price list was not confidential, special, or restricted to a limited number or class of purchasers. The cost of respondent's product offered as "free" is included in the purchase price of other merchandise purchased. The so-called free offer is nothing more nor less than a combination offer.

PAR. 10. The use by the respondent of the aforesaid false and misleading statements and representations, disseminated as aforesaid, has the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and members of the purchasing public have been inducted to purchase substantial quantities of respondent's product, So-Luminum, because of such erroneous and mistaken belief.

CONCLUSION

The acts and practices of the respondent 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 the respondent, testimony and other evidence taken before a trial exam-

iner of the Commission theretofore duly designated by it in support of the allegations of said complaint and in opposition thereto, report of the trial examiner upon the evidence, and briefs filed in support of the complaint and in opposition thereto; and the Commission having made its findings as to the facts and its conclusion that said respondent, So-Lo Works, Inc., a corporation, formerly known and named herein as the Perfect Manufacturing Co., a corporation, trading and doing business as the So-Lo Works, has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, So-Lo Works, Inc., a corporation, formerly known as the Perfect Manufacturing Co., a corporation, trading and doing business as the So-Lo Works, and its officers, representatives, 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 its product So-Luminum or any other product of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

1. Representing that the respondent is the largest manufacturer of menders in the world.

2. Representing that respondent's product So-Luminum or any other product of substantially similar composition or possessing substantially similar properties will withstand heat of direct flame of 2,000° F. or any other degree of heat over and above that which the product can actually withstand.

3. That an article repaired with respondent's product So-Luminum or any other product of substantially similar composition or possessing substantially similar properties is equivalent to a new or unused article.

4. Representing that respondent does, or proposes to, extensively advertise its said product in any locality where salesmen are employed when in fact no such advertising is issued.

5. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors for any stated period of time which is not a true representation of the net earnings or profits which have been made for such stated period of time by a substantial number of respondent's active agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

6. Using the term "free" or any other term of similar import or meaning to designate, describe, or in any way refer to articles of merchandise regularly included in a combination offer with other merchandise.

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7. Representing that any price list which is distributed generally is a confidential or special price list or is restricted to a limited number or class of purchasers.

It is further ordered, That the 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.

Commissioner Mason not participating.

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IN THE MATTER OF

HASWELL T. BONFIELD AND THEO. TRECKER, TRADING
AS ATHEA RESEARCH & PROCESSING LABORATORY,
AND BERT S. GITTINSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5450. Complaint, June 28, 1946—Decision, Nov. 26, 1946*

Where two individuals engaged in the interstate sale and distribution of a hand lotion designated "Athea," along with their advertising agent; through newspaper and periodical advertisements, and circulars, leaflets, and other advertising material—

- (a) Represented falsely that said product afforded a high degree of protection to the hands of industrially employed individuals by providing a protective mechanical barrier against dirt, grease, grime, and all other foreign elements, and that it would protect the hands from infection and irritation;
- (b) Falsely represented that use thereof would replace the natural oils of the skin which had been removed by strong alkaline soaps;
- (c) Represented falsely that said preparation was highly antiseptic when used as directed, that is, by thoroughly rubbing in a small amount of the product before starting work; and
- (d) Falsely represented that said preparation was manufactured by individuals who possessed complete knowledge of the skin, and that theretofore unused principles of physics and mechanical design were employed in its manufacture;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken belief that said representations were true and thereby to induce purchase of 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.

Mr. D. C. Daniel 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 Haswell T. Bonfield and Theo. Trecker, individually and as copartners trading as Athea Research & Processing Laboratory, and Bert S. Gittins, trading under his own name, hereinafter referred to as respondents, have violated the provisions of the 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. Haswell T. Bonfield and Theo. Trecker are individuals trading and doing business as Athea Research & Processing Labora-