

IN THE MATTER OF

ELMER L. BOYD, HERMA LOU BOYD, AND ELIZABETH
EPPS, TRADING AS PERMA-PLASTIC-SEAL COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5424. Complaint, Feb. 27, 1946—Decision, Nov. 3, 1947

Where three individuals engaged in the interstate sale and distribution of paints and varnishes; in advertising their "Perma-Plastic-Seal" product in newspapers and magazines and in pamphlets, circular letters, and other advertising media, directly or by implication—

- (a) Represented that their said product was a plastic, which sealed all types of floors permanently, constituted a remarkable new laboratory discovery, and was different from any floor finish on the market;

The facts being that while it may have contained some of the ingredients used in the manufacture of plastics, such as resins, cellulose, and cellulose nitrate, it was not in fact a plastic as understood by the trade and purchasing public, but was a paint or varnish, which did not differ materially from many other floor finishes which had been on the market for many years, would not satisfactorily cover every type of surface, and was in no sense a remarkable new laboratory discovery;

- (b) Falsely represented that it was suitable for covering every type of surface, such as linoleum, rubber, concrete, wood, cork, inlaid asphalt tile, bar tops, dance floors, and gymnasium floors; produced a cellophane-like surface; and dried rapidly;
- (c) Falsely represented that it out-performed wax in every way; would last for months under heavy traffic; rejuvenated old flooring and restored the original color of floors to which it was applied; and
- (d) Falsely represented that its use created a nonskid and slipproof condition on the surfaces to which it was applied; and that it resembled tile; and,

Where said individuals, engaged as aforesaid—

- (e) Falsely represented through the use of the word "plastic," in their trade name and in the name of their said product, that the latter was a plastic; With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their product, and thereby cause it to purchase 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.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Wayne Van Osdon, of Detroit, Mich., for respondents.

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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 Elmer L. Boyd, Herma Lou Boyd, and Elizabeth Epps, individuals trading as Perma-Plastic-Seal 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 Elmer L. Boyd, Herma Lou Boyd, and Elizabeth Epps are individuals trading as Perma-Plastic-Seal Co. with their office and principal place of business located at 1818 Buhl Building, Grosse Pointe and Congress Street, Detroit, Mich. Respondents formerly had their office and principal place of business at 15320 East Jefferson Avenue, Grosse Pointe, Mich.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the sale and distribution of paints and varnishes designated as "Perma-Plastic-Seal."

The respondents cause and have caused said product, when sold, to be transported from their said places of business in the State of Michigan to purchasers thereof located at various points in the several States of the United States and the District of Columbia. Respondents maintain and at all times herein mentioned have 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. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their product the respondents have circulated, and are now circulating, among prospective purchasers throughout the United States, by United States mails, by means of advertisements inserted in newspapers and magazines, by means of advertising folders, pamphlets, circular letters, labels, and other advertising material, all of general circulation, many false statements and representations concerning their said product. Among and typical of such false statements and representations are the following:

NOW! THE NEW NON-SKID LIQUID PLASTIC FINISH—FINISH FOR EVERY TYPE OF FLOOR

Eliminates Scrubbing * * * Lustrous as Cellophane Guaranteed *Non-Skid*
* * * Out-Performs Wax * * *

Out Performs wax 200 to 1.

IT'S PERMA-PLASTIC-SEAL, remarkable new labor-discovery. Just what the name implies; a plastic coating that seals * * * permanently.

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IT'S DIFFERENT from any floor finish on the market today. Its a liquid plastic.

COVERS EVERY TYPE OF SURFACE * * * Linoleum, rubber, concrete, wood, cork, inlaid, asphalt tile, bar tops, dance floors * * * gym floors * * * gives them all a sparkling beauty treatment, a Cellophane-like surface that outshines, out-performs wax in every way.

EASILY APPLIED BY ANYONE. No skilled labor is necessary. Goes on smoothly with a brush, leaves no streaks or brush marks. Dries rapidly, needs no polishing, leaves a gleaming transparent film.

STANDS UP! ITS TOUGH! Perma-Plastic-Seal can take it! Its brilliant Cellophane-like finish lasts for months under heavy traffic. Durable, stain-resistant, wear-resistant; also resists alcohol, boiling water and mild acids. Eliminates waxing, Polishing and Scrubbing. Reduces maintenance costs, saves money, time and labor. Has no obnoxious odor!

PERMA-PLASTIC-SEAL IS GUARANTEED NON-SKID. Eliminates the many hazards of slippery floors, the danger of bodily injury.

Rejuvenates old Floors, saves replacement costs. If your present floor covering is worn, faded, marred or stained, Perma-Plastic-Seal will give it a brilliant glossy surface not only restoring but improving the original color and beauty.

"Just like a layer of cellophane." "Pigmented"—It resembles tile. Its deep rich lustre, its seemingly wearproof film is the result of years of experiments by chemical engineers. It is a real Plastic—a postwar product now.

PAR. 4. Through the foregoing statements and representations hereinabove set forth, and others similar thereto but not specifically set out herein, the respondents represent directly or by implication that their product designated "Perma-Plastic-Seal" is a liquid plastic and is a remarkable new laboratory discovery; that it is a plastic and seals all types of floors permanently; that it is different from any floor finish on the market; that it covers every type of surface such as linoleum, rubber, concrete, wood, cork, inlaid, asphalt tile, bar tops, dance floors, and gym floors, and produces a cellophane-like surface; that it dries rapidly; that it out-performs wax 200 to 1 or out-performs wax in every way; that Perma-Plastic-Seal will last for months under heavy traffic; that it is durable, stain-resistant; wear-resistant, resists alcohol, boiling water and mild acids; that it eliminates wax polishing and scrubbing; that it rejuvenates old flooring and will restore and improve the original color and beauty of floors to which it is applied; that its use creates a nonskid and slipproof condition on the surface to which it is applied; that their product is the result of years of experiments by chemical engineers; that it is a real plastic; a postwar product; that it exceeds in quality any similar material now being used; that it resembles tile.

PAR. 5. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, respondents' product Perma-Plastic-Seal, while it 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, it is not a plastic or liquid plastic as these terms are understood by the public. Said product is not a remarkable new laboratory discovery and does not contain new ingredients or ingredients that are not found in other high-class paints, varnishes, or lacquers which have contained the various ingredients used in respondents' said product for many years, and have been sold and are now sold as paints, varnishes, or lacquers. Said product does not seal surfaces permanently and is not permanent. Said product is not different from many floor finishes now on the market and which have been on the market for many years. It does not satisfactorily cover every type of surface such as linoleum, rubber, concrete, wood, cork, inlaid, asphalt tile, bar tops, dance floors and gym floors, and it does not produce a cellophane-like surface. It will not out-perform wax 200 to 1 or out-perform wax in every way. It will not dry rapidly. Said product will not last for months under heavy traffic. It is not durable, stain-resistant, or wear-resistant, nor does it resist alcohol, boiling water, and mild acids. The use of Perma-Plastic-Seal does not rejuvenate old flooring; it does not restore or improve the original color and beauty of floors upon which it is applied. It is not nonskid or slipproof, nor does it resemble tile in appearance or wearing properties. Respondents' product Perma-Plastic-Seal is not the result of years of experiments by chemical engineers. It is not a postwar product, nor does it contain ingredients discovered in the war effort. Perma-Plastic-Seal is not different in its composition from other comparable, competitive paint and varnish products being used today for the same purpose for which respondents' product is recommended.

PAR. 6. The use by the respondents of the word "plastic" in their trade name and in designating, describing, and referring to their said product designated "Perma-Plastic-Seal," as aforesaid, is misleading and deceptive in that said product is not a plastic 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 product. 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.

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PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations has had, and now has, a 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 product.

PAR. 8. 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 February 27, 1946, issued and thereafter served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing by respondents of their answer to the complaint, a hearing was held before a trial examiner of the Commission theretofore duly designated by it, at which hearing a stipulation of facts was agreed upon by counsel supporting the complaint and counsel for the respondents and read into the record, such stipulation being in lieu of evidence in support of or in opposition to the allegations of the complaint. Thereafter, the proceeding regularly came on for final consideration by the Commission upon the complaint, answer, stipulation of facts, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed on behalf of respondents 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, Elmer L. Boyd, Herma Lou Boyd, and Elizabeth Epps are individuals who for more than 1 year immediately preceding April 20, 1946, were engaged in the sale and distribution of paints and varnishes, including a product designated by them as "Perma-Plastic-Seal." Respondents traded under the name Perma-Plastic-Seal Co., their office and principal place of business being lo-

cated at 1818 Buhl Building, Grosse Points and Congress Streets, Detroit, Mich.

PAR. 2. Respondents caused their products, when sold, to be transported from their place of business in the State of Michigan to purchasers thereof located in various other States of the United States. Respondents maintained a course of trade in their products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, and for the purpose of inducing the purchase of their product Perma-Plastic-Seal, respondents advertised the product by means of advertisements inserted in newspapers and magazines and also by means of pamphlets, circular letters and other advertising media, all of which advertisements were disseminated among prospective purchasers. Among and typical of the statements appearing in the advertisements were the following:

NOW THE NEW NON-SKID LIQUID PLASTIC FINISH. FINISH FOR EVERY TYPE OF FLOOR

Eliminates Scrubbing * * * Lustrous as Cellophane
Guaranteed *Non-Skid* * * * Out-Performs Wax * * *
Out Performs wax 200 to 1.

IT'S PERMA-PLASTIC-SEAL, remarkable new laboratory discovery. Just what the name implies; a plastic coating that seals * * * permanently.

IT'S DIFFERENT from any floor finish on the market today. It's a liquid plastic.

COVERS EVERY TYPE OF SURFACE * * * Linoleum, rubber, concrete, wood, cork, inlaid, asphalt tile, bar tops, dance floors * * * gym floors * * * gives them all a sparkling beauty treatment, a Cellophane-like surface that outshines, out-performs wax in every way.

EASILY APPLIED BY ANYONE. No skilled labor is necessary. Goes on smoothly with a brush, leaves no streaks or brush marks. Dries rapidly, needs no polishing, leaves a gleaming transparent film.

STANDS UP! IT'S TOUGH! Perma-Plastic-Seal can take it! Its brilliant Cellophane-like finish lasts for months under heavy traffic. Durable, stain-resistant, wear-resistant; also resists alcohol, boiling water and mild acids. Eliminates waxing, Polishing and Scrubbing. Reduces maintenance costs, saves money, time and labor. Has no obnoxious odor!

PERMA-PLASTIC-SEAL IS GUARANTEED NON-SKID. Eliminates the many hazards of slippery floors, the danger of bodily injury.

Rejuvenates old Floors, saves replacement costs. If your present floor covering is worn, faded, marred or stained, Perma-Plastic-Seal will give it a brilliant glossy surface not only restoring but improving the original color and beauty.

"Just like a layer of cellophane," "Pigmented". It resembles tile. Its deep rich lustre, its seemingly wearproof film is the result of years of experiments by chemical engineers. It is a real Plastic—a postwar product now.

PAR. 4. Through these statements and others of a similar nature respondents represented, directly or by implication, that their product

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Perma-Plastic Seal was a plastic; that it sealed all types of floors permanently; that it was a remarkable new laboratory discovery; that it was different from any floor finish on the market; that it was suitable for covering every type of surface, such as linoleum, rubber, concrete, wood, cork, inlaid asphalt tile, bar tops, dance floors, and gymnasium floors; that it produced a cellophane-like surface; that it dried rapidly; that it out-performed wax in every way; that it would last for months under heavy traffic; that it rejuvenated old flooring and restored the original color of floors to which it was applied; that its use created a nonskid and slipproof condition on the surfaces to which it was applied; and that it resembled tile.

PAR. 5. These representations were erroneous and misleading. While the product may have contained some of the ingredients used in the manufacture of plastics, such as resins, cellulose and cellulose nitrate, it was not in fact a plastic as that term is understood by the trade and the purchasing public. Actually, it was a paint or varnish and did not differ materially from many other floor finishes which have been on the market for many years. It was in no sense a remarkable new laboratory discovery. The product did not seal surfaces permanently. It would not satisfactorily cover every type of surface and did not produce a cellophane-like surface. It would not out-perform wax in every way and would not dry rapidly under all conditions. The product was incapable of lasting for months under heavy traffic. The use of the product would not rejuvenate old flooring nor would it restore the original color of floors to which it was applied. Its use did not create a nonskid or slipproof condition. The product did not resemble tile.

PAR. 6. The use by respondents of the word "plastic" in their trade name and in the name of their product was misleading in that it constituted a representation that the product was a plastic. As pointed out above, the product was not a plastic as that term is understood by the trade and the purchasing public.

PAR. 7. The use by the respondents of the representations referred to above, including the use of the word "plastic" in respondents' trade name, and in the name of their product, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, properties and qualities of their product, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice of the public and constitute unfair and deceptive acts and practice 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, a stipulation of facts entered into between counsel supporting the complaint and counsel for respondents, recommended decision of the trial examiner, and brief in support of the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondents, Elmer L. Boyd, Herma Lou Boyd, and Elizabeth Epps individually and trading as Perma-Plastic-Seal Co., or trading under any other name, and their 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 respondents' product now designated "Perma-Plastic-Seal," or any product of substantially similar composition or possessing substantially similar properties, under whatever name sold, do forthwith cease and desist from representing, directly or by implication:

1. That said product seals surfaces permanently.
2. That said product is a remarkable, new laboratory discovery.
3. That said product differs from all other floor finishes.
4. That said product is suitable for covering every type of surface.
5. That said product produces a cellophane-type surface.
6. That said product dries rapidly under all conditions.
7. That said product out-performs wax in every way.
8. That said product will last for months under heavy traffic.
9. That said product rejuvenates old flooring or restores the original color of flooring.
10. That said product creates a nonskid or slipproof condition.
11. That said product resembles tile.

It is further ordered, That the respondents and their representatives, agents, and employees, directly or through any corporate or other

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device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said product, or any product of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

Using the word "Plastic," or any word of similar import, in respondents' trade name or in the name of said product; or otherwise representing, directly or by implication, that said product is a plastic.

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.

Syllabus

IN THE MATTER OF

JOE WLODINGER, CELIA WLODINGER, AND HARRIET WLODINGER, TRADING AS FARMERS' MAIL ORDER HOUSE

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914

Docket 5461. Complaint, Sept. 23, 1946—Decision, Nov. 3, 1947

Where two partners, engaged in the interstate sale and distribution of new, used, made-over, and second-hand wearing apparel, in advertising their merchandise in various trade and farm journals, and by catalogs mailed directly to prospective purchasers, and in various other ways—

- (a) Represented that they were making an introductory or bargain offer of their products, through such statements as "Our Introductory Bargain Offer to You * * * 10 Dresses \$2.98—20 Dresses \$5.90"; when in fact such merchandise could be purchased by anyone, or repeatedly by the same purchaser, at the prices specified therein;
- (b) Represented that with every purchase of \$5.90 or more a purchaser would receive a dress "absolutely free" as a special introductory gift; the fact being the purchase of other merchandise and payment of a valuable consideration was required before delivery of said dress to the purchaser; and
- (c) Represented that they were offering for sale work socks which contained wool, waterproof raincoats, women's wool skirts and ladies' linen or part linen handkerchiefs; when in fact the socks advertised as having a "cashmere finish" contained no wool whatever, the raincoats were not waterproof, the "wool skirts" were predominantly rayon, and the "linen" handkerchiefs were made of cotton;

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 to cause its purchase of their merchandise; and

Where said partners, engaged, in the course of their said business, in the purchase of old, worn, or previously used hats, which they had cleaned, dyed and blocked, and to which, whenever necessary, they added new trimmings, sweat bands, and linings, and some of which when thereafter offered for sale, had the appearance of new—

- (d) Sold their said hats with no label, marking, or designation stamped thereon or attached thereto to indicate to the purchasing public that they were in fact second-hand or reconditioned products, which had been processed to appear new and were readily accepted by members of the purchasing public as new;

With the result that a substantial portion of said public was led to believe that said hats were in fact new hats, made entirely of new materials, and purchased substantial quantities thereof; and with the effect of placing in the hands of purchasers of their said hats for resale, a means and instrumentality whereby the latter might and did mislead and deceive the purchasing public as to the true facts in regard thereto: