

IN THE MATTER OF
CONCRETE MATERIALS CORPORATION

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

Docket 5474. Complaint, Dec. 10, 1946—Decision, Nov. 9, 1949

Where a corporation, engaged in the manufacture and interstate sale and distribution, under the trade name "Comco," of various products for treating stone, brick, and cement structures to make them more resistant to water; through statements in folders, pamphlets, circular letters and labels, directly or by implication—

- (a) Falsely represented that its product "Comco 2 Iron Waterproofing" or "Comco 2" or "Comco No. 2," containing 90 percent metallic iron, would permanently stop all leaks and seepage in concrete, brick, stone, and tiles; would waterproof basements below water level and pits under pressure; and would, when mixed with water and brushed into the cracks of walls and floors needing repairs, permanently waterproof and stop leaks in such surfaces under all conditions of water contact; and that use thereof would permanently waterproof concrete, brick, stone, and tile walls and floors when used either from the inside or outside and create a positive waterproof condition for all classes of construction under all conditions, no matter how severe;

The facts being that no iron waterproofing has been developed which is capable of coping with all forms of seepage above and below grade;

- (b) Falsely represented that its "Comco Transparent Waterproofing" or "Comco 6" effectively sealed and waterproofed concrete, brick, stone, stucco, plaster and masonry surfaces, and made said surfaces upon which it was applied permanently nonabsorbent to water;

The facts being that said product, composed primarily of aluminum salts in a mixture of fatty acids, was of little value when applied to highly permeable masonry walls; while it would tend to seal the pores in masonry surfaces as against capillary penetration, its efficacy in such connection was less than the life of the structure and might last for but 5 or 6 years; and it would not seal openings larger than pore spaces which permit water to come through in quantity;

- (c) Represented that its "Comco Waterproofing Paste" or "Comco 4" permanently waterproofed concrete on all forms of new construction work; the facts being that while, when properly integrated with concrete, it would improve impermeability by effecting small inductions in absorption through capillarity and lessening the incidence of honeycomb, and similar structural defects, it would not effectively waterproof structures below grade which are subjected to water under pressure; and

- (d) Falsely represented through the use of the word "Waterproof" or words of similar import, that its said products, when applied as directed, would render masonry units or structures impervious to and proof against the pas-

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sage of water and moisture throughout the life of such masonry under all conditions of water or moisture contact or exposure;

With tendency and capacity to mislead a substantial portion of the purchasing public with respect to the nature and properties of its products, 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.

In said proceeding, in which it appeared that respondent's advertising formerly contained pictures of Chicago's Merchandise Mart, a large office building, tendency and capacity of which was to cause purchasers to believe erroneously that such building was respondent's factory and place of business; but that said practice had been voluntarily discontinued by respondent under circumstances which indicated that it would not be resumed:

The Commission was of the opinion that no further corrective action was required in the public interest and the charges of the complaint in said respect were dismissed.

Before *Mr. Henry P. Alden*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. John J. Toohey, 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 Concrete Materials 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 is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its office and principal place of business located at 318-320 West Hubbard Street, Chicago, Ill. The respondent is now and for more than 1 year last past has been engaged in the manufacture and distribution of various compounds or materials represented as waterproofing agents for treating stone, brick, and cement structures so as to make them more resistant to water. Said products are sold under the trade name "Comco."

PAR. 2. The respondent causes said products, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located at various points in the several States of the United

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States and the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a 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 its said business and for the purpose of inducing the purchase of its products, the respondent has circulated, and is now circulating, among prospective purchasers throughout the United States by United States mails, by means of advertising folders, pamphlets, circular letters, labels and other advertising material, all of general circulation, many false statements and representations concerning its said products. Among and typical of such false statements and representations are the following:

You can now permanently stop all leaks and seepage in concrete, brick, stone and tile; also waterproof below water level basements and pits under pressure. Comco No. 2, our own waterproofing will do the job. This is a special chemical mixture of iron and other chemicals that, when mixed with water only, and brushed into the cracks of walls and floors needing repair will permanently waterproof and stop leaks under all conditions no matter how severe.

For after-construction waterproofing problems in foundations. Permanently waterproofs concrete, brick, stone and tile walls and floors from either inside or outside. For all classes of construction where a prospective waterproof condition is necessary. Successful under all conditions no matter how severe.

Comco 6, Comco Transparent Waterproofing. A transparent water repellent liquid that effectively seals and waterproofs concrete, brick, stone, stucco, plaster or masonry surfaces. Makes surface permanently non-absorbent.

Comco 4, Comco waterproofing paste for new construction work. Produces a close-meshed concrete that increases strength and permanently waterproofs. Makes concrete flow easily around reinforcing.

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 or by implication that its product "Comco 2" will permanently stop all leaks and seepage in concrete, brick, stone, and tile; that it will waterproof basements below water level and pits under pressure; that said product is a special chemical mixture of iron and other chemicals which, when mixed with water and brushed into the cracks of walls and floors needing repairs, will permanently waterproof and stop leaks in same under all conditions no matter how severe; that its use will permanently waterproof concrete, brick, stone, and tile walls and floors when used either from the inside or outside; that its use creates a positive waterproof condition for all classes of construction, and successfully waterproofs under all conditions no matter how severe; that its product "Comco 6," transparent waterproofing, effectively seals and waterproofs concrete, brick, stone, stucco, plaster, and masonry surfaces, and makes said surfaces

upon which it is applied permanently nonabsorbent to water; that its product, "Comco 4," waterproofing paste, produces a close meshed concrete on any construction work, and increases the strength and permanently waterproofs same; and that its use makes concrete flow easily around reinforcing.

Respondent thereby represents, directly and by implication that its said products will permanently waterproof concrete, brick, stone, or tile walls or floors, permanently stop all leaks or seepage therein, or make the surface thereof permanently nonabsorbent, and that said products afford permanent or everlasting protection to walls, surfaces, and structures to which they are applied.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, respondent's product Comco 2 iron waterproofing, cannot be considered a satisfactory waterproofing for permeable brick masonry walls when applied to the inside exposed face of said walls. Its use does not create a positive waterproof condition for all classes of construction such as concrete, brick, stone, and tile walls and floors under all conditions, regardless of how severe. Said product will not permanently stop all leaks and seepage in concrete, brick, stone, and tile, and will not waterproof basements below water level and pits under pressure. Respondent's said product is not a special chemical mixture of iron and other chemicals which, when mixed with water and brushed into the cracks of walls and floors, will permanently waterproof and stop leaks and cracks under all conditions. Respondent's product Comco transparent waterproofing is ineffective and of little or no value as a waterproofing for permeable brick, masonry and does not effectively seal and waterproof concrete, brick, stone, stucco, plaster, or masonry surfaces, and does not make the surfaces on which it is applied nonabsorbent to water. Respondent's product Comco 4 waterproofing paste is a fatty-acid type of water repellent agent. While said product may effect small reductions in absorption by capillarity and improve the impermeability, it is not satisfactory or effective for below-grade structure where a waterproofing agent is needed. The lasting or durable quality of the aforesaid products is limited at most by the life expectancy of the base to which they are applied. The aforesaid products will not permanently waterproof concrete, brick, stone, and tile, nor make the surfaces of same permanently nonabsorbent to water. While respondent's waterproofing preparations, when expertly applied under certain limited conditions of use, may effectively waterproof such structures for varying periods of time, the effectiveness is not permanent under any condition of use. Said preparations will not effectively waterproof con-

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crete, brick, stone, and tile walls and floors or other masonry structures when such surfaces are subjected to water under pressure. There are other products and materials on the market like or similar to those of respondent, which, when expertly applied under certain limited conditions of use, are as effective as respondent's said products. However, no products or materials have yet been developed which are capable of coping with all forms of seepage above and below grade.

PAR. 6. In advertising circulars having general interstate circulation among customers and prospective customers of respondent corporation, above the words printed in heavy black type:

CONCRETE MATERIALS
CORPORATION

appears a picture of a large office building, depicting Chicago's Merchandise Mart, said pictorial representation being intended to convey, and conveying, the impression that the said building shown therein was and is the factory and place of business owned and operated by the respondent herein, and from which products manufactured by the respondent were, and are, shipped direct to the consumer.

In truth and in fact, the respondent's business is neither located in, nor operated from, the building so depicted in its advertising, nor from any building remotely approaching in size or appearance the said building so pictorially displayed in respondent's said circular. While respondent's premises on West Hubbard Street are in close proximity to Chicago's Merchandise Mart building, there is no connection, physical or otherwise, between them.

PAR. 7. The use by respondent of the foregoing statements and representations disseminated as aforesaid has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and advertisements are true and did and does induce a substantial portion of the purchasing public to purchase substantial quantities of respondent's said products as a result of such belief, so induced.

PAR. 8. The aforesaid acts and practices of respondent as herein alleged are all to the 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 10, 1946, issued and sub-

sequently served its complaint in this proceeding upon the respondent, Concrete Materials Corp., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. Respondent having elected to file no answer thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint subsequently 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, the proceeding regularly came on for final hearing before the Commission on the complaint, the testimony, and other evidence, the trial examiner's recommended decision and exceptions thereto filed by respondent, briefs in support of and in opposition to the allegations of the complaint, and oral argument; and the Commission, having considered the matter and being 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 is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 318-320 West Hubbard Street, Chicago, Ill. The respondent is now, and for 8 years last past has been, engaged in the manufacture and distribution of various products for treating stone, brick, and cement structures to make them more resistant to water which are sold under the trade name "Comco."

PAR. 2. The respondent causes its products, when sold, to be transported from its place of business in the State of Illinois to purchasers thereof located at various points in the several States of the United States and the District of Columbia. Respondent maintains, and at all times herein mentioned has maintained, a course of trade therein 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 its business, and for the purpose of inducing the purchase of its products, the respondent has circulated, and is now circulating, among prospective purchasers throughout the United States, advertising matter by means of folders, pamphlets, circular letters, and labels containing many statements and representations concerning its products. Among and typical of such statements and representations are the following:

You can now permanently stop all leaks and seepage in concrete, brick, stone and tile; also waterproof below water level basements and pits under pressure.

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Comco No. 2, our own waterproofing will do the job. This is a special chemical mixture of iron and other chemicals that, when mixed with water only, and brushed into the cracks of walls and floors needing repair will permanently waterproof and stop leaks under all conditions no matter how severe.

For after-construction waterproofing problems in foundations. Permanently waterproofs concrete, brick, stone and tile walls and floors from either inside or outside. For all classes of construction where a positive waterproof condition is necessary. Successful under all conditions no matter how severe.

Comco 6, Comco Transparent Waterproofing. A transparent water repellent liquid that effectively seals and waterproofs concrete, brick, stone, stucco, plaster or masonry surfaces. Makes surface permanently non-absorbent.

Comco 4, Comco Waterproofing Paste for new construction work. Produces a close-meshed concrete * * * and permanently waterproofs. * * *.

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 or by implication that its product "Comco 2" (also designated as "Comco 2 Iron Waterproofing" and as "Comco No. 2") will permanently stop all leaks and seepage in concrete, brick, stone, and tile; that it will waterproof basements below water level and pits under pressure; that said product, when mixed with water and brushed into the cracks of walls and floors needing repairs, will permanently waterproof and stop leaks in such surfaces under all conditions of water contact; and that its use will permanently waterproof concrete, brick, stone, and tile walls and floors when used either from the inside or outside and will create a positive waterproof condition for all classes of construction under all conditions no matter how severe. Respondent further represents that its product "Comco 6" (also designated as "Comco Transparent Water-proofing") effectively seals and waterproofs concrete, brick, stone, stucco, plaster, and masonry surfaces, and makes said surfaces upon which it is applied permanently nonabsorbent to water; and that the product "Comco 4" (also designated as "Comco Waterproofing Paste") permanently waterproofs concrete on all forms of new construction work.

PAR. 5. Such representations are false and misleading. The product "Comco 2 Iron Waterproofing" is a powder composed of 90 percent metallic iron, 8 percent sand, and 2 percent ammonium chloride. To masonry surfaces which have been cleaned with a wire brush and subsequently flushed with water and then permitted to dry for 8 to 24 hours, respondent directs that "Comco 2 Iron Waterproofing" be applied with a paint brush in a water mix of heavy consistency.

The application of two coatings of the product is represented to be sufficient but respondent suggests the addition of a third coat to any damp spots which later may appear.

In experiments conducted by the National Bureau of Standards, Comco 2 Iron Waterproofing, applied as directed by respondent, did not prevent the penetration of water through a brick wall under conditions simulating wind-driven rain. Applied as directed to the inside of permeable brick masonry surfaces, such product is not a satisfactory waterproofing and its use will not create a positive waterproof condition for all classes of construction, such as concrete, brick, stone, and tile walls and floors under all conditions of water or moisture contact, particularly as against water under pressure, including some conditions of wind-driven rain. It will not waterproof basements below water level and pits when subjected to water under pressure. No iron waterproofing has been developed which is capable of coping with all forms of seepage above and below grade.

"Comco 6," also designated as "Comco Transparent Waterproofing," recommended for application by either brush or spray, is composed primarily of aluminum salts in a mixture of fatty acids. It is of little value when applied to highly permeable masonry walls. While it will tend to seal the pores in masonry surfaces as against capillary penetration, its efficacy in such connection is less than the life of the structure and may last for but 5 or 6 years. Comco 6 will not seal openings larger than pore spaces which permit water to come through in quantity. The product will not effectively seal or waterproof concrete, brick, stone, stucco, plaster, or masonry surfaces under all conditions of use or make surfaces to which it is applied nonabsorbent to water.

"Comco 4," also designated as "Comco Waterproofing Paste," is a fatty-acid type of water repelling agent. When properly integrated with concrete it will improve impermeability by effecting small inductions in absorption through capillarity and lessening the incidence of honey-comb and similar structural defects. It will not effectively waterproof structures below grade which are subjected to water under pressure.

Through the use of the word "waterproof" or words of similar import, respondent has falsely represented that its products, when applied as directed to masonry units or structures, will render such units or structures impervious to and proof against the passage of water and moisture through the life of such masonry under all conditions of water or moisture contact or exposure.

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PAR. 6. The use by the respondent of the representations referred to above has had, and now has, the tendency and capacity to mislead a substantial portion of the purchasing public with respect to the nature and properties of respondent's products, and a tendency and capacity to cause such portion of the public to purchase substantial quantities thereof as a result of the erroneous and mistaken beliefs so engendered.

CONCLUSION

The acts and practices of the 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.

In close proximity to the corporate name respondent's advertising formerly contained pictures of Chicago's Merchandise Mart, a large office building, which depiction had the tendency and capacity to cause purchasers to erroneously believe that such building was the factory and place of business from which respondent's products were manufactured and shipped to the consumer. In view of respondent's voluntary discontinuance of such practice under circumstances indicative that it will not be resumed, the Commission is of the opinion that no further corrective action is required in the public interest and the charges of the complaint in respect thereto are being dismissed.

ORDER TO CEASE AND DESIST

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

It is ordered, That the respondent, Concrete Materials Corp., a corporation, and its officers, agents, representatives, 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 respondent's products now designated as "Comco 2 Iron Waterproofing," "Comco 6," and "Comco 4," or any products of substantially similar composition or possessing substantially similar properties, under whatever names sold, do forthwith cease and desist from:

1. Representing in any manner that when used as directed "Comco 2 Iron Waterproofing," under all conditions of water or moisture contact, will waterproof concrete, brick, stone, or tile walls, or floors, or stop leaks or seepage in or through masonry structures or surfaces, or that such product will waterproof basements below water level or pits under pressure.

2. Using the words "waterproof" or "waterproofing" or words of similar import, to describe or refer to "Comco 2 Iron Waterproofing" without disclosing that such product will not render masonry structures or surfaces impermeable to water under all conditions of contact, particularly water under pressure.

3. Representing in any manner that "Comco 6," also designated as "Comco Transparent Waterproofing," effectively seals or waterproofs permeable concrete, brick, stone, stucco, plaster, or masonry surfaces or makes such surfaces nonabsorbent under all conditions of water or moisture contact.

4. Using the words "waterproofing" or "waterproof," or words of similar import, to designate, describe, or refer to "Comco 6," also designated as "Comco Transparent Waterproofing," without disclosing that such product will not seal such large openings in masonry units as permit water to penetrate in quantity and that such value as may be afforded by use of the product stems from the tendency thereof to temporarily seal pores in treated masonry units against capillary penetration of moisture.

5. Representing in any manner that "Comco 4," also designated as "Comco Waterproofing Paste" waterproofs concrete under all conditions of water contact; or using the words "waterproofing" or "waterproof," or words of similar import, to describe or refer to such product without disclosing that its use will not render surfaces below grade impermeable to water under pressure.

It is further ordered, That the charges of the complaint directed to respondent's former use in close proximity with its corporate name of pictures of a large office building in which respondent did not have a place of business be, and the same hereby are, dismissed without prejudice to the right of the Commission to take such further action in the future as may be warranted by the then-existing circumstances.

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.

IN THE MATTER OF

BRISTOL-MYERS 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 4861. Complaint, Oct. 28, 1942—Decision, Nov. 15, 1949

The word "survey" as used in advertising representing that, according to a national survey conducted among thousands of dentists, twice as many personally used the advertiser-vendor's tooth paste as any other dentifrice, etc., fairly implied, if not the questioning of all dentists, at least the questioning of a representative, unbiased and fair samplings from the profession as a whole.

The preponderant weight of qualified dental opinion, based on clinical experience of many years with thousands of patients, is that soft, well-cooked non-fibrous foods are not conducive to gum trouble; that it is immaterial to gum health whether the diet of a person is soft or coarse; and that the modern American diet provides sufficient gum stimulation.

The word "massage" as used by dentists means a careful downward stroke or squeezing applied to only a quarter inch of the gum margin and teeth, and its proper use by laymen requires professional instruction over a considerable length of time. As used, however, in tooth-paste advertisements stating that massage with the product concerned will provide needed exercise for the gums and stimulation, make them firm and healthy, guard against "pink tooth brush" and prevent gum trouble generally, the word means to the great majority of the general public a horizontal, vertical, or rotary scrubbing of the teeth and all of the gums with the tooth brush, or a similar rubbing with the finger, and regardless of the need for and benefits to be expected from gum massage as employed by the dentist, it appears that such uninstructed "massage" as that contemplated by such advertisements, either with or without any dentifrice, does not and will not accomplish such results.

The preponderant weight of qualified dental opinion, as based on clinical experience, is that even massage, performed as instructed by the dentist is not necessary in an undiseased mouth; that a layman is unable to ascertain whether or not he is in need of massage; and that no dentifrice adds any benefit to gum massage, either through mechanical or chemical action of appreciable duration or significance, or therapeutically.

As respects the representation in the advertisements of a certain toothpaste that it would beautify the smile and brighten and whiten the teeth, the Commission was of the opinion that the reference to beautification of the smile was mere puffery, unlikely, because of its generality and wide variety of meaning, to deceive any one factually.

Where a corporation engaged in the interstate sale and distribution of "Ipana" toothpaste from its principal place of business in New York or from its plants or warehouses in other States; along with two advertising agencies employed by it to handle, respectively, newspaper and periodical advertising, and radio advertising for said product, who, after having been instructed by it