

Syllabus

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

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

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

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

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

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

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

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

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

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

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

- (d) Falsely represented that his "Plasti-Cote Interior" was a "miracle" paint, one coat of which filled all cracks and surface imperfections, whether applied over old paint, wall paper, rough cracked surfaces, wallboard, plaster walls, or wood, and that it would not crack, peel, or chip; and
- (e) Falsely represented that his "Cello-Nu Waterproof" would waterproof basements, stop all water seepages, and cause the masonry components to consolidate into one single solid mass, leaving the surface to which it was applied hard and immune to destructive reactions of masonry and the elements;

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

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

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

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

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

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

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

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

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Paul Unger, an individual trading as Cello-Nu Products, hereinafter referred to as the respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Paul Unger is an individual trading as Cello-Nu Products, with his office and principal place of business located at 65 East Lake Street, Chicago, Ill.

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

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

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

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

Representations concerning Plasti-Cote:

PLASTI-COTE!

THE MIRACLE LIQUID-PLASTIC PAINT

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

A LIFETIME
FINISH

REPAINT WITH
PLASTIC!

PLASTI-COTE

the amazing
Liquid-Plastic Paint

ONE COAT COVERS

The Paint of Tomorrow—Today!

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

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

PLASTI-COTE and
Beautify your Roof

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

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

PLASTI-COTE is waterproof.

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

PLASTI-COTE will save money because one coat covers.

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

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

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

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

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

—CELLO-NU—

NOW! A NON-SKID PLASTIC FLOOR FINISH

That outwears Wax 200 to 1.

Cello-Nu eliminates the use of wax.

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

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

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

Representations concerning Plasti-Cote Exterior:

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

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

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

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

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

Scientifically Formulated.

TO DO FOUR SPECIFIC HOME PAINTING JOBS

Outside Walls Inside Walls Basement Walls Roof Covering.

Representations concerning plasti-Cote Interior:

PLASTI-COTE (INTERIOR) For Kitchen, Bath, Bedroom and Living Room.

One coat of this miracle plastic-paint fills all cracks and surface imperfections—

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

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

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

Representations concerning Plasti-Cote Transparent Floor Paint:

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

Representations concerning Cello-Nu Waterproof Paint:

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

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

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

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

Representations concerning Cello-Nu Floor Finish:

Plasticize Your Floors With CELLO-NU Floor Finish.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

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

FINDINGS AS TO THE FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

ORDER TO CEASE AND DESIST

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

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

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

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

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

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

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

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

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

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

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

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

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

IN THE MATTER OF
ERVIN UNGER AND DOLORES UNGER

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

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

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

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

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

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

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

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

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

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

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

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