

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

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Commission was of the opinion and found that said charges had not been sustained by the greater weight of the evidence.

With regard to the paramount issue in the proceeding, in the view of counsel and the trial examiner, namely, respondents' 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 the experts from the Bureau of Standards that a paint might be properly so referred to if the covering contained at least 50 percent of the soluble solids comprising one or more of the raw materials used in the manufacture of plastics—the Commission, even assuming that it could determine from the instant record the requirements for a "plastic paint," was not in a position to find whether or not respondents' products met such requirements, since, insofar as the actual composition thereof was concerned, the record was completely silent; and the Commission accordingly made no findings on said issue as to whether or not the respondents' paint products might or might not be properly referred to as "plastic paints."

As respects other misrepresentations which the complaint in said proceeding charged respondents with making in connection with their "Perma Plastic," "Perma Plastic Exterior," "Interior," and "Finisher," and their "Cello-Nu," including their "Interior," and "Exterior," and their "Plasti-Cote" and "Plasticote" to the effect that the particular product, as the case might be, left a smooth tile-like finish, made waxing obsolete, would outwear wax two hundred to one, produced a hard surface coating, was self-leveling, waxed as easily as finest tile, remained elastic, expanding and contracting with changing weather conditions, protected against summer heat and winter cold, did not require undercoats, etc.; the Commission was of the opinion and found that such 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 respondents.

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 Ervin Unger, an individual trading as Perma Plastic Products and as a copartner with Dolores Unger, an individual trading as Cello Nu Products, Plasti-Cote Products, and Plasticote Products, and Dolores Unger, individually and as a copartner with Ervin Unger trading as Cello Nu Products, Plasti-Cote Products, and Plasticote Products, hereinafter re-

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ferred to as respondents, have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that 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. Ervin Unger is an individual trading as Perma Plastic Products with his offices and principal place of business located at 905 South 5th Street, Philadelphia, Pa., formerly located at 1138 Schofield Building, Cleveland, Ohio.

PAR. 2. The respondent Ervin Unger is now and for more than 1 year last past has been engaged in the sale and distribution of paints and varnishes designated Perma Plastic coatings, Perma Transparent, Perma Tile Finish, and Perma Tile Floor Finish. Said respondent Ervin Unger is also engaged in business as a copartner with respondent Dolores Unger as hereinafter alleged.

PAR. 3. Respondent Dolores Unger is an individual trading as Cello Nu Products, Plasti-Cote Products, and Plasticote Products with their offices and principal places of business located at 905 South Fifth Street and 1906 Market Street, Philadelphia, Pa., with branch offices in Chicago, Ill.; New York, N. Y.; Newark, N. J.; Cincinnati, Ohio; Omaha, Nebr.; and Boston, Mass.

The respondents Ervin Unger and Dolores Unger are now and for more than 1 year last past have been engaged in the sale and distribution of paints and varnishes designated Cello Nu and Plasti-Cote.

PAR. 4. The respondents cause their said products, when sold by them, to be transported from their aforesaid places of business in the States of Illinois, Pennsylvania, New York, New Jersey, Ohio, Nebraska, and Massachusetts to purchasers thereof located at various points in the several States of the United States other than the States of Illinois, New York, Ohio, Nebraska, and Massachusetts and in the District of Columbia.

Said respondents maintain and at all times mentioned herein have 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. 5. In the course and conduct of his said business and for the purpose of inducing the purchase of his said products the respondent Ervin Unger trading as Perma Plastic Products has circulated among prospective purchasers through the United States mails, by advertisements, inserted in newspapers, magazines, by means of advertising pamphlets, booklets, circulars, labels, and other advertising matter

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all in 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 Perma Plastic:

PERMA PLASTIC

The New Miracle Liquid-Plastic Coating—A Lifetime Finish.

PERMA PLASTIC, 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.

PERMA PLASTIC Weather-proof insulating exterior finishes.

See how it covers all imperfections and leaves a smooth, tile-like finish.

Now You Can Waterproof, Beautify Your Basement.

Can be applied to Concrete, Tile, Brick, etc., Floors and Walls DAMP or painted; No Etching; No Seepage; No Costly Undercoats.

PERMA PLASTIC WATERPROOF

PERMA PLASTIC

THE AMAZING LIQUID PLASTIC PAINT

The one-coat paint that amateurs apply with PROFESSIONAL results . . . Durable, hard surface coating.

PLASTIC

PAINT

IS HERE!

Plastics bring you Perma Plastic Paint. Dries with hard tile-like finish. Will last through the years. One coat covers all.

This radically new laboratory product.

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

Eliminates Waxing and Polishing.

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

THE MIRACLE LIQUID
PLASTIC PAINT

ONE COAT COVERS
EASY TO APPLY

Amateurs can get the same results as professional painters.

NOW: A NON-SKID PLASTIC FLOOR FINISH. That outwears wax 200 to 1.

RESISTS Cigarette Burns, Alcohol, Boiling Water, Uric Acid, Scratches, etc.

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

PERMA PLASTIC

PENETRATES WATERPROOFS PRESERVES

\$8.95 Gallon.

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Causes a chemical reaction that solidifies the various component parts of masonry into one single solid mass—stops dusting, cracking, crumbling. Locks in all Alkalies and Lime and prevents seepage.

\$6.95 Gallon

TILE-LIKE FINISH

Representations concerning Perma Plastic (Exterior):

One coat of Perma Plastic exterior paint is equivalent to 5 coats of ordinary paint. Durable, hard surface, coating of Perma Plastic is fade-proof, weather-proof and water-resistant. Perma Plastic covers all cracks and imperfections, even old weatherbeaten wood surfaces, leaving smooth, even surfaces.

See this lifetime plastic paint before you do any decorating—either inside or out.

Representations concerning Perma Plastic (Interior):

One coat of this miracle plastic-paint fills all cracks and surface imperfections—whether you paint over old paint, wallpaper, rough, cracked surfaces, wallboard, 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.

Representations concerning Perma Plastic Waterproofing:

PERMA PLASTIC WATERPROOFER
WATERPROOFS PENETRATES PRESERVES

The vehicle PENETRATES and leaves the surface hard and immune to destructive reactions of masonry and elements.

Representations concerning Perma Plastic Finish:

PERMA COTE
YOUR FLOORS
With Perma Plastic Finish

Non-skid finish that banishes waxing and polishing. Tough, bright, resistant to alcohol, grease, boiling water and even lye.

PAR. 6. Through the foregoing statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondent Ervin Unger represents, directly and by implication, that his product Perma Plastic is a miracle liquid plastic, that said product produces a lifetime finish and is a startling new discovery in liquid plastics; that the use of said product makes it possible to refinish both interior and exterior surfaces with a real plastic coating; that his said product Perma Plastic is weatherproof and insulates exterior finishes and produces a smooth tile-like finish; that Perma Plastic will waterproof basements, can be applied to concrete, tile, brick, and other floors and walls, damp or painted, and requires no etching or undercoats and creates no seepage; that his product Perma Plastic is an amazing liquid plastic paint; that said product is durable and produces a hard surface coating and dries to a hard tile-like finish

and lasts for years; that one coat of said product covers; that Perma Plastic is a new laboratory product and wholly different from any product being used for maintenance of linoleum, rubber, concrete, cork, or wood floors; that it leaves a cellophane-like plastic finish to surfaces on which it is applied; that its use makes waxing obsolete and eliminates waxing and polishing; that said product is nonskid and resists cigarette burns, alcohol, boiling water, uric acid, scratches, and other substances; that it outwears wax 200 to 1; that his product Perma Plastic has the same chemical properties, materials, consistency, and firmness as molded plastic products; that said product penetrates, waterproofs, and preserves surfaces upon which it is applied and causes the said component parts of masonry to which it is applied to consolidate or solidify into one single and solid mass and stops dusting, cracking, crumbling, and locks in all alkalies and lime and prevents seepage.

Respondent Ervin Unger further represents, directly and by implication, that one coat of his product Perma Plastic exterior paint is equivalent to five coats of ordinary paint; that it is a durable hard-surface coating, fadeproof, weatherproof, and water-resistant; that his said product Perma Plastic exterior paint covers all cracks and imperfections, even old weather-beaten wood surfaces, leaving a smooth, even surface; that it is a lifetime plastic paint.

Respondent Ervin Unger further represents that one coat of his product Perma Plastic interior paint fills all cracks and surface imperfections, whether painted or old paint, wallpaper, rough-cracked surfaces, wallboard, plastered walls, or wood, and is self-leveling and leaves no brush marks; that said product will not peel, crack, or chip and washes as easily as finest tile; that it is a miracle plastic paint.

Respondent Ervin Unger further represents, directly and by implication, that his product Perma Plastic Waterproofer is waterproof; that said product penetrates and preserves surfaces upon which it is applied, and that the vehicle or medium used in said product leaves the surface hard and immune to destructive reactions of masonry and elements.

Respondent Ervin Unger represents, directly and by inference, that his product Perma Plastic Finish is a nonskid finish and banishes waxing and polishing and produces a tough, bright finish; that said product is resistant to alcohol, grease, boiling water, and even lye.

PAR. 7. The foregoing statements and representations are false, misleading, and deceptive. In truth and in fact, respondent's product Perma Plastic is not a miracle liquid plastic coating. Said product does not produce a lifetime finish; it is not a startling new discovery

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in liquid plastic and does not make it possible to refinish both exterior and interior surfaces with a real plastic coating. Said product is not weatherproof and has no insulating value. It does not leave a smooth tile-like finish. Said product cannot be satisfactorily applied to concrete, tile brick, and other floors and walls when damp or painted and will not waterproof basements. Said product does require etching and undercoats and does not prevent seepage. It is not an amazing liquid plastic paint, and does not last for years. Said product is not durable and is not a new laboratory product. Said product is not different from other comparable competitive products being used today for maintenance of linoleum, rubber, concrete, cork, or wood and other floors and walls. Said product does not produce a cellophane-like plastic finish to surfaces to which it is applied. It does not make waxing obsolete or eliminate waxing and polishing. Said product does not create a nonskid plastic floor finish and is not resistant to cigarette burns, alcohol, boiling water, uric acid, scratches, and other substances. It will not outwear 200 to 1 or any other appreciable extent. Respondent's said product Perma Plastic does not have the same chemical properties, material consistency and firmness as molded plastic products and it will not penetrate, waterproof, or preserve surfaces upon which it is applied nor cause the component parts of masonry to which it is applied to consolidate or solidify into one single solid mass and does not stop dusting, cracking, crumbling, and will not lock in all alkalies and lime and does not prevent seepage.

One coat of respondent's product Perma Plastic exterior paint is not equivalent to five coats of ordinary paint. It is not durable, does not produce a hard-surface coating. It is not fadeproof, weatherproof or water-resistant. Said product does not cover all cracks and imperfections, including weather-beaten wood surfaces, and does not leave a smooth, even surface. It is not a lifetime plastic paint or a plastic paint.

One coat of respondent's product Perma Plastic interior paint does not satisfactorily fill all cracks and surface imperfections whether painted over old paint, wallpaper, rough-cracked surfaces, wallboard, plastered walls, or wood. Said product is not self-leveling and leaves brush marks. It will peel and chip and does not wash as easily as finest tile.

Respondent Ervin Unger's product Perma Plastic Waterproofer will not waterproof, penetrate, or preserve surfaces upon which it is applied. The vehicle or medium used in said product will not penetrate and will not leave the surface upon which it is applied hard and immune to destructive reactions of masonry and the elements.

Respondent Ervin Unger's product Perma Plastic Finish does not create a nonskid finish and does not eliminate waxing or polishing of said surfaces upon which it is applied. It does not produce a tough, bright finish and is not resistant to alcohol, grease, boiling water, and lye.

Respondent Ervin Unger's products designated Perma Plastic are nothing more than just a paint. In truth and in fact, said products do not contain any different ingredients or properties than similar competitive paints.

PAR. 8. In the course and conduct of their said business the respondents Ervin Unger and Dolores Unger trading as Cello Nu Products, Plasti-Cote Products, and Plasticote Products, and for the purpose of inducing the purchase of their products, the respondents have circulated among prospective purchasers throughout the United States mails, by advertisements inserted in newspapers, magazines, by means of advertising, pamphlets, booklets, circulars, labels, and other advertising matter, all in general circulation, many false statements and representations concerning their said products. Among and typical of such false statements and representations are the following:

Representations concerning Cello Nu:

The synthetic resin base paint of tomorrow.

Cello Nu plastic coating, hard, smooth, flexible, tile-like finish, covers over cracks, scratches and blemishes with one coat.

One coat covers! EXTERIOR does not dry out brittle but remains elastic to expand and contract with changing weather conditions. One coat covers wood, concrete, brick, stucco, any surface. Seals cracks and splits. Protects against summer heat, winter cold and moisture, dry rot, dirt, fumes and moisture cannot penetrate. Gives lasting beauty and protection.

INTERIOR. Beautifies walls and woodwork. One coat makes them so much easier to keep clean. Hard, smooth tile-like finish.

FLOORS get a remarkable cellophane-like, non-skid finish that banishes wax and polish, ideal for all surfaces. Resistant to cigarette burns, alcohol, boiling water, even lye.

WATERPROOFS and beautifies basements, makes them dry, cozy, colorful. No priming needed, no costly undercoat. Easy to apply on damp or dry surfaces.

REPAINT YOUR CAR. One coat covers your old finish, gives luxurious new car beauty that will stand rigorous treatment. One quart covers the average car, \$2.95 quart.

Finishes walls like tile, woodwork like porcelain.

Representations concerning Plasti-Cote:

The synthetic resin base paint of tomorrow.

Hard, smooth, flexible, tile-like finish.

One coat covers! EXTERIOR does not dry out brittle but remains elastic to expand and contract with changing weather conditions. One coat covers wood, concrete, brick, stucco, any surface. Seals cracks and splits. Protects against

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summer heat, winter cold and moisture, dry rot, dirt, fumes and moisture cannot penetrate. Gives lasting beauty and protection.

INTERIOR. Beautifies walls and woodwork. One coat makes them so much easier to keep clean. Hard, smooth tile-like finish.

FLOORS get a remarkable cellophane-like, non-skid finish that banishes wax and polish, ideal for all surfaces. Resistant to cigarette burns, alcohol, boiling water, even lye.

WATERPROOFS and beautifies basements, makes them dry, cozy, colorful. No priming needed, no costly undercoat. Easy to apply on damp or dry surfaces.

REPAINT YOUR CAR. One coat covers your old finish, gives luxurious new car beauty that will stand rigorous treatment. One quart covers the average car, \$2.95 quart.

Finishes walls like tile, woodwork like porcelain.

Plasti-Cote AAA, the amazing liquid plastic paint. Plasti-Cote is more than just a paint. It is a real liquid plastic base. Does not crack, blister or peel.

PAR. 9. Through the foregoing statements and representations hereinabove set forth and others similar thereto not specifically set out herein, the respondents Ervin Unger and Dolores Unger, directly and by implication, represent that their product Cello Nu is a synthetic resin-base paint; that it is a plastic coating; that said product produces a hard, smooth, flexible tile-like finish that covers over cracks, scratches, and blemishes with one coat; that their product Cello Nu Exterior does not dry out brittle but remains elastic and expands and contracts with changing weather conditions; that one coat covers wood, concrete, brick, stucco, or any surface; that it seals cracks and splits; that it protects against summer heat, winter cold, and moisture and dry rot; that dirt, fumes, and moisture cannot penetrate surfaces upon which it is applied; that it gives lasting beauty and protection; that their product Cello Nu Interior beautifies walls and woodwork; that one coat makes them much easier to keep clean; that its use produces a hard, smooth, tile-like finish; that their products Cello Nu when used on exterior surfaces does not dry out brittle, but remains elastic to expand and contract with changing weather conditions; that their product Cello Nu when used on interior surfaces does not dry out brittle but remains elastic to expand and contract with changing weather conditions; that the use of their product Cello Nu on floors creates a remarkable cellophane-like appearance and a nonskid finish; that its use banishes waxing and polishing; that it is ideal for all surfaces; that said product resists cigarette burns, alcohol, boiling water and lye; that their product Cello Nu is waterproof and waterproofs basements, making them dry; that it can be applied on damp or dry surfaces and requires no undercoating; that one coat of their product Cello Nu covers the old finish on automo-

biles and creates a luxurious new car beauty that will withstand rigorous treatment.

PAR. 10. Through the foregoing statements and representations hereinabove set forth and others similarly thereto not specifically set out herein, the respondents Ervin Unger and Dolores Unger, trading as Plasti-Cote Products and Plasticote Products, represent that their products Plasti-Cote and Plasticote produce a hard, smooth, flexible tile-like finish that covers over cracks, scratches, and blemishes with one coat; that their products Plasti-Cote and Plasticote do not dry out brittle but remain elastic and expand and contract with changing weather conditions; that one coat covers wood, concrete, brick, stucco, or any surface; that it seals cracks and splits; that it protects against summer heat, winter cold, and moisture and dry rot; that dirt, fumes, and moisture cannot penetrate surfaces upon which it is applied; that it gives lasting beauty and protection; that their products Plasti-Cote and Plasticote beautify walls and woodwork; that one coat makes them much easier to keep clean; that its use produces a hard, smooth, tile-like finish; that their products Plasti-Cote and Plasticote, when used on exterior surfaces, do not dry out brittle but remain elastic to expand and contract with changing weather conditions; that their products Plasti-Cote and Plasticote when used on interior surfaces do not dry out brittle but remain elastic to expand and contract with changing weather conditions; that the use of their products Plasti-Cote and Plasticote on floors creates a remarkable cellophane-like appearance and a nonskid finish; that its use banishes waxing and polishing; that it is ideal for all surfaces; that said products resist cigarette burns, alcohol, boiling water, and lye; that their products Plasti-Cote and Plasticote are waterproof and will waterproof basements, making them dry; that it can be applied on damp or dry surfaces and requires no undercoating; that one coat of their products Plasti-Cote and Plasticote will cover the old finish on automobiles and create a luxurious new car beauty that will withstand rigorous treatment; that it is an amazing liquid paint; that it is more than just a paint.

PAR. 11. The foregoing statements and representations concerning Cello Nu, Plasti-Cote, and Plasticote are false, misleading, and deceptive. In truth and in fact, the respondents' products Cello Nu and Plasti-Cote are not synthetic resin-base paint or plastic coatings. The use of said products does not create a hard, smooth, flexible, tile-like finish; said products do not cover over cracks, scratches, and blemishes by the application of one coat. Respondents' said products, when used

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on exterior surfaces do dry out brittle and do not remain elastic, do not expand and contract with changing weather conditions. One coat will not satisfactory cover wood, concrete, brick, stucco, or any other surface; does not seal cracks and splits; does not protect against summer heat, winter cold, and moisture or dry rot; dirt, fumes, and moisture can penetrate surfaces upon which they are applied. Respondents' said products when used on interior surfaces do not create a hard, smooth, tile-like finish. Said products when applied to floors do not create a cellophane-like appearance or a nonskid or slipproof condition on said floors. The use of said products does not eliminate waxing and polishing of the surfaces to which they are applied. Said products are not ideal or satisfactory for all surfaces. Said products are not resistant to alcohol, cigarette burns, boiling water, or lye. Said products are not waterproof and do not waterproof basements or make them dry. Said products do require undercoats. Said products cannot be satisfactorily applied to floors and walls when damp. One coat of said products will not satisfactorily cover old automobile finish nor give automobiles a luxurious new car appearance and will not withstand rigorous treatment. Said products are not different from other comparable competitive products sold as paints being used today.

PAR. 12. The use by the respondent Ervin Unger of the words "Perma Plastic" in designating, describing, and referring to his said product, and of the words "Perma Plastic" in his trade name, and the use by the respondents Ervin Unger and Dolores Unger of the words "Plasti-Cote" and "Plasti-Cote, a Liquid Plastic" in designating, describing, and referring to their said products Cello Nu and Plasti-Cote, and of the words "Plasti-Cote" in their trade name is misleading and deceptive in that said products are not plastics 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 products. 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.

PAR. 13. Respondents' products Perma Plastics, Plasti-Cote and Cello Nu 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. They are not remarkable new laboratory discoveries, and do not contain new ingredients or other ingredients that are not found in other high-class paints, varnishes, or lacquers, which have contained the various ingredients used in respondents' said products for many years and have been sold and are now sold as paints, varnishes, or lacquers. Said products are not plastics or liquid plastics as these terms are understood by the public.

PAR. 14. The use by the respondents of the aforesaid false, and misleading, and deceptive representations and statements has had 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 thus induce a substantial portion of the purchasing public, because of such erroneous and mistaken beliefs, to purchase said products.

PAR. 15. 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 March 18, 1946, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. The respondent's joint answer to said complaint was filed on June 10, 1946. At a hearing convened on May 25, 1948, before a trial examiner of the Commission a stipulation was entered into by and between counsel in support of the complaint and counsel for the respondents in which it was agreed that the testimony and other evidence in support of and in opposition to the complaint in the Commission's proceeding against Paul Unger, individually and trading as Cello-Nu Products, Docket No. 5392, may be taken as the evidence in support of and in opposition to the complaint in this proceeding, that the Commission may proceed upon said testimony and other evidence to make its findings as to the facts and enter its order disposing of this proceeding, and that insofar as the findings as to the facts and order disposing of Docket No. 5392 are applicable herein, the Commission may enter in this proceeding the same findings and

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order as those entered in said Docket No. 5392.¹ Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer thereto, certain exhibits and the testimony and other evidence in the matter of Paul Unger, individually and trading as Cello-Nu Products, Docket No. 5392 (no briefs having been filed 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, Ervin Unger and Dolores Unger, are individuals trading and doing business under the trade name of Cello-Nu Products, Plasti-Cote Products, and Plasticote Products, with their office and principal place of business located at 905 South Fifth Street, in the city of Philadelphia, State of Pennsylvania. Said respondents formerly maintained their office and place of business at 1138 Schofield Building, Cleveland, Ohio. The respondents are now and for a number of years have been, engaged in the sale and distribution of various types of paints and related products designated "Cello-Nu," "Plasti-Cote," and "Plasticote."

PAR. 2. The respondents cause the aforesaid products, when sold, to be transported from their place of business in the State of Pennsylvania to purchasers thereof located in various other States of the United States and in the District of Columbia. Said respondents maintain, and at all times mentioned herein have 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 their business, and for the purpose of inducing the purchase of their "Cello-Nu," "Plasti-Cote," and "Plasticote" paint products, the respondents have circulated 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 respondents have represented, among other things: (a) That their products designated "Cello-Nu," "Plasti-Cote," or "Plasticote"

¹ See *ante*, p. 279.

are "miracle" and "amazing" paints; that one coat of said products will cover the surface to which it is applied; and that said products flow on smoothly, filling all cracks and surface imperfections, and giving extra-durable fadeproof and waterproof finishes that will not crack, blister, or peel; (b) that their "Cello-Nu," "Plasti-Cote," or "Plasticote" Exterior paint fills all cracks and imperfections on wood, concrete, brick, stucco, or any other surface; and that it gives lasting beauty to the surface to which it is applied; and (c) that their "Cello-Nu," "Plasti-Cote," or "Plasticote" Basement paint will waterproof basements.

PAR. 4. (a) The respondents throughout this proceeding have contended that the binders or nonvolatile vehicles of their products designated "Cello-Nu," "Plasti-Cote," and "Plasticote" 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 vehicles in the respondent's paints may be composed in part of some of these raw materials does not render their products either materially different from or substantially better than the paint products of many of their competitors. It is not true, as the respondents have represented, that any of their products are "miracle" or "amazing" paints, or that they are the result of a "new discovery" in liquid plastics.

(b) The respondents' paint products do not differ substantially, either in composition or otherwise, from many other good-quality paints on the market, and, as in the case of other paints, there are many conditions, including the passage of time, 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 respondents' products and often prevent them from holding their original color and luster. A number of witnesses testified that one coat of said paints did not adequately cover the surface to which it was applied, as they were led to believe it would by the respondents' representations; and the testimony of other users was to the effect that the products failed to fill all cracks and surface imperfections, and that the paints would and did fade, crack, blister, and peel.

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(c) The record shows that there are surfaces, particularly asbestos shingles, for which neither the respondents' paints 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 the respondents' Exterior paint, to cover all of the cracks and imperfections in such surfaces.

(d) The respondents' "Cello-Nu," "Plasti-Cote," or "Plasticote" Basement paint is of no value whatever as a waterproofer, and, contrary to the respondents' representations it will not render brick or masonry walls impermeable to water or stop leaks.

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

PAR. 5. (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 respondents in promoting the sale of their paint products, and charged that such statements and representations were also false, deceptive, and misleading. It charged, in addition, that the use by the respondents of the terms "Plasti-Cote" and "Plasti-Cote, a Liquid Plastic," in designating their products, and of the term "Plasti-Cote" in their 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 "Plasti-Cote, a Liquid Plastic," have not been sustained by the greater weight of the evidence.

(b) The complaint also attacked the respondents' practice of referring to their 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 of 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-repellent.

(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 respondents' products meet such requirements. Insofar as the actual composition of the products are concerned, the record is completely silent.

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

PAR. 6. The use by the respondents 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 respondents' paint products.

CONCLUSION

The acts and practices of the respondent as herein found (excluding those referred to in paragraph 5) were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices

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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 respondents' answer thereto, certain exhibits, and the testimony and other evidence introduced before a trial examiner of the Commission in the matter of Paul Unger, individually and trading as Cello-Nu Products, which said testimony and evidence were taken as the evidence in support of and in opposition to the complaint in this proceeding pursuant to a stipulation entered into by and between counsel herein (no briefs having been filed and oral argument not having been requested); and the Commission, having made its findings as to the facts and its conclusion that the respondents, Ervin Unger and Dolores Unger, have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Ervin Unger and Dolores Unger, individually and trading as Cello-Nu Products, Plasti-Cote Products, or Plasticote Products, or trading under any other name or through any corporate or other device, 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 "Cello-Nu," "Plasti-Cote," and "Plasticote," or any other product or products of substantially similar composition, whether sold under the same names or under any other names, 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 will fill all cracks and imperfections in a surface to which they are applied, or that one coat of any of said products will adequately cover a surface;

(c) That any of said products will produce a finish which is fade-proof or waterproof, or one which will not crack, blister, or peel;

(d) That any of said products will render brick or masonry walls impermeable to water or moisture, or that they will waterproof basements.

It is further ordered, That the respondents shall, within sixty (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.

Complaint

IN THE MATTER OF
MIDLAND LABORATORIESCOMPLAINT, FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5676. Complaint, July 7, 1949—Decision, Dec. 27, 1949*

Where a corporation engaged in the interstate sale and distribution of two food insecticides which it designated as "Mill-O-Cide" and "Mill-O-Cide Concentrate"; through statements in leaflets, pamphlets, and circular letters, directly and by inference—

- (a) Represented falsely that pyrethrum, contained in said concentrate, is the only insecticide safe for use around food products; the facts being that, granted proper precautions, insecticides other than those containing said substance are safe; and other active insecticidal ingredients were also contained therein;
- (b) Represented that their said "Mill-O-Cide," when used as directed, would kill food insects in all stages of insect life; and facts being that when applied, as recommended, by spraying, it would kill only those insects, insect eggs and larvae with which it came in contact;
- (c) Represented that the toxic and repellent effects of said product would remain several hours after spraying; the facts being that no particular time after spraying could be fixed within which invading insects would be killed or repelled, since effect on insects invading a storeroom or warehouse after spraying depends on variable factors, including equipment used and density of the mist created;
- (d) Represented that said preparation was not toxic or poisonous to humans or warm-blooded animals; the facts being that while, when used as directed, it was not so, it did contain ingredients which were thus toxic;
- (e) Represented that said preparation created no fire hazard; when in fact it did constitute a fire hazard unless used as directed; and
- (f) Represented that it would not taint or leave an odor on food products; when in fact if sprayed directly on food or bakery products it would impart an odor or taste thereto;

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 cause its purchase of substantial quantities of said preparations:

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

Mr. Joseph Callaway for the Commission.

O'Connor, Thomas & O'Connor, of Dubuque, Iowa, 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