

IN THE MATTER OF
WARNER ELECTRIC COMPANY ET AL.

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

Docket 5582. Complaint, Sept. 21, 1948—Decision, Jan. 28, 1952

Where a corporation and its two officers, engaged in the interstate sale and distribution of their "Warner Brush Electroplater"; in advertising in newspapers, and periodicals, circulars, pamphlets and other advertising literature, directly or by implication—

- (a) Represented that the results obtained through the use of their machine equalled those obtained through the use of the conventional tank or immersion method of electroplating;

The facts being that while the brush method serves a useful purpose within its field, it is incapable of accomplishing results equal to those accomplished by the tank method or conventional way of electroplating, in wide use in the trade and capable of handling almost any type of work;

- (b) Falsely represented that the brush method of electroplating works as well on rough as on smooth surfaces, and as well in deep recesses and on irregular shapes as on flat, smooth surfaces and regular shapes; the facts being that, generally speaking, it works satisfactorily only on surfaces which are relatively small and smooth and which do not have deep recesses or complicated or irregular shapes; and

- (c) Falsely represented that said method of electroplating was new or a new invention; the facts being that while their machine and accompanying equipment possessed certain features and improvements which distinguished them from brush electroplater sets generally, the method or substantially similar methods had been in use for fifty years or more;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to their product and thereby cause its purchase thereof:

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 respects other charges in the complaint to the effect that respondents falsely advertised that through use of their method it was easy and simple to plate metal articles; that special skill and knowledge was not required for satisfactory results; that worn articles could be replated by a stroke of the brush and that their method would chromium plate; that through doing work for others their device would pay for itself within a week; that a complete set of necessary tools and equipment was furnished purchasers; and that they were owners of a patent entitling them to exclusive use of the method concerned: the Commission was of the opinion that such charges were not sustained by the greater weight of the evidence.

Before *Mr. William L. Pack*, hearing examiner.

Mr. Morton Nesmith and *Mr. George M. Martin* for the Commission.

Mr. William A. Romanek, of Chicago, Ill., 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 the Warner Electric Company, a corporation, and Michael M. Warner, Raymond E. Brandell, and Archer L. Howard, individually, and as officers of Warner Electric Company, a corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Warner Electric Company, is a corporation organized, existing and doing business under the laws of the State of Illinois with its principal office located at 360 North Michigan Avenue in the city of Chicago, State of Illinois, with its plant located at 1512 West Jarvis Street, in the city of Chicago, State of Illinois. The respondent, Michael M. Warner, is the president and treasurer of said corporation, his address being 4005 West Waveland Avenue in the city of Chicago, State of Illinois. The respondent Raymond E. Brandell, is the vice-president of said corporation, his address being 5401 West Division Street, in the city of Chicago, State of Illinois. The respondent Archer L. Howard, is the secretary of said corporation, his address being 815 Greenwood Street in the city of Wilmette in the State of Illinois. By virtue of their positions as officers, the individual respondents direct, dominate, and control the acts and practices of the corporate respondents.

PAR. 2. The said respondents, Warner Electric Company, a corporation, and Michael M. Warner, Raymond E. Brandell, and Archer L. Howard, individually and as officers of corporate respondent, are now, and for more than one year last past have been, engaged in the offering for sale, sale and distribution in commerce between and among the various States of the United States, of an electroplating device designated as "Warner Brush-Electroplater" causing the same, when sold to be shipped from their place of business in the State of Illinois to purchasers thereof located in various other States of the United States.

All of said respondents maintain and at all times mentioned herein have maintained, a course of trade in said device, 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 aforesaid business, and for the purpose of promoting the sale of their said device, in commerce,

Complaint

48 F. T. C.

respondents make and have made certain statements, representations, and claims concerning said device and the use thereof by means of advertisements inserted in newspapers and periodicals and by circulars, leaflets, pamphlets, and other advertising literature. Among and typical of said statements, representations, and claims are the following:

NEW Invention Electroplates by BRUSH. Easy to Plate CHROMIUM, GOLD, SILVER, NICKEL, COPPER—For pleasure and profit! If you have a workshop—at home or in business—you need this new Warner Electroplater. At the stroke of an electrified brush, you can electroplate models and projects, tools, fixtures, silverware, etc. with a durable sparkling coat of metal—Gold, Silver, Chromium, Nickel, Copper or Cadmium. Method is easy, simple, quick. Everything furnished—equipment complete, ready for use. By doing a bit of work for others, your machine can pay for itself within a week.

The Warner Method does not require a skilled operator.

No skill or experience is required.

Warner Brush Plating equals the immersion type plating in both beauty and durability.

Electroplating by brush works equally well on smooth or rough, flat or round surfaces, in deep recesses and on irregular shapes.

PAR. 4. Through the use by the respondents of the foregoing claims and representations, they have directly or indirectly represented that it is easy and simple to plate metal objects with chromium, copper, silver, nickel, or other metals by the Warner method of electroplating; that one does not have to be a skillful operator or have special knowledge of the electroplating process in order to obtain satisfactory plating results by the use of their device and method; that by a stroke of their electroplating brush, worn articles such as faucets, tools, silverware, and other metal articles can be replated with a durable sparkling coat of metal; that their said brush method of electroplating will chromium plate an article; that their method of electroplating by brush, plates equally well on smooth or rough, flat or round surfaces, and in deep recesses and on irregular shapes; that their brush method of electroplating equals the results obtained by using the conventional tank method, insofar as appearance, quality, and durability is concerned; that by doing work for others, the device will pay for itself in one week; that a complete set of tools and equipment necessary for satisfactory electroplating is furnished the purchasers of such devices; that the brush method of electroplating is new and that respondents are the owners of a design or process patent which entitled them to the exclusive use of such method.

PAR. 5. The aforesaid statements and representations, in truth and in fact, are false, misleading and deceptive. The use of respondents' device is not an easy or simple method of electroplating. Its use does require considerable skill and knowledge to obtain a satisfactory

result. Worn out articles such as faucets, tools, and silverware or other metal articles cannot be replated with a durable sparkling coat of metal by a stroke of their electroplating brush. Said brush method of electroplating will not satisfactorily chromium plate an article. The use of said device will not plate equally well on smooth, rough, flat or round surfaces and in deep recesses and irregular shapes. The use of said device will not equal the results obtained by using the conventional tank method of electroplating insofar as appearance, quality and durability is concerned. The device will not pay for itself in one week or any other definite time by doing work for others. A complete set of tools and equipment necessary for satisfactory electroplating is not furnished the purchasers of such device. The brush method of electroplating is not new and respondents are not the owners of a design or process patent which entitles them to the exclusive use of such method.

PAR. 6. The use by the respondents of the foregoing false, deceptive and misleading statements and representations with respect to their device, disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true and induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said device.

PAR. 7. 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 September 21, 1948, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that Act. After the issuance of said complaint and the filing of answer thereto by respondent Warner Electric Company and of separate answer by respondents Archer L. Howard, Raymond E. Brandell and Michael M. Warner, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a hearing 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,

Findings

48 F. T. C.

this proceeding regularly came on for final hearing before the Commission upon the complaint, respondents' answers, testimony and other evidence, the hearing examiner's recommended decision and exceptions thereto, and brief of counsel supporting the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the public interest and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Warner Electric Company is a corporation organized, existing and doing business under the laws of the State of Illinois, with its principal office located at 360 North Michigan Avenue, Chicago, Illinois, and its plant located at 1512 West Jarvis Street, Chicago, Illinois. Respondent Michael M. Warner is president and treasurer of the respondent corporation, his address being 4005 West Waveland Avenue, Chicago, Illinois. Respondent Raymond E. Brandell is vice president and general manager of the corporation, his address being 5401 West Division Street, Chicago, Illinois. These two individuals direct and control the operation of the corporation and the formulation of its business policies and practices.

While respondent Archer L. Howard was at one time connected with the corporation, being its secretary and office manager, he severed his connection in December 1948. The record does not indicate that during the period of his connection with the corporation he participated actively in the management of the business or in the formulation of its policies and the order of the Commission which is separately issuing herein provides that he be dismissed as a party to this proceeding. The term "respondents" as used hereinafter, therefore, does not include respondent Archer L. Howard, unless the contrary is indicated.

PAR. 2. The respondents are now, and for several years last past have been, engaged in the sale and distribution of an electroplating machine or device designated by them as "Warner Brush Electroplater." Respondents cause and have caused their machine, when sold, to be transported from their 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. Respondents maintain and have maintained a course of trade in their product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of promoting the sale of their product respondents have made certain statements with respect thereto, which statements have appeared in advertisements inserted in newspapers and periodicals, and in circulars, pamphlets and other advertising literature distributed among prospective purchasers. Among and typical of such statements are the following:

Warner Brush Plating equals the immersion type plating in both beauty and durability.

Electroplating by brush works equally well on smooth or rough, flat or round surfaces, in deep recesses and on irregular shapes.

NEW Invention Electroplates by BRUSH.

The Warner Electroplating System, as you well know, is a revolutionary advance in the science of electroplating. This newly patented method cuts the cost of equipment to about ONE-TENTH THE INVESTMENT formerly needed to do practical work. The enclosed circular clearly explains and pictures how the Warner Method permits plating with a BRUSH—instead of using the commonly accepted, complicated and costly tank process.

NOW ELECTROPLATING WITH A BRUSH

A Remarkable Development in the Field of Electrolysis!

THE NEW Warner Method of Electroplating by Brush deposits a plating of gold, silver, nickel, copper, cadmium, or chromium on metal articles by *electrolysis*—without costly equipment, tanks, and generators. * * * In many types of work this simple new method offers definite advantages.

PAR. 4. Through the use of these statements respondents have represented, directly or by implication, that the results obtained through the use of respondents' machine equal those obtained through the use of the conventional tank or immersion method of electroplating; that the brush method of electroplating works as well on rough as on smooth surfaces, and as well in deep recesses and on irregular shapes as on flat, smooth surfaces and regular shapes; and that the brush method of electroplating is new or a new invention.

PAR. 5. As implied by its name, Warner Brush Electroplater, respondents' machine is a brush electroplater as distinguished from the tank or immersion electroplating process. The tank or immersion process is the common or conventional way of electroplating, being in wide use in the trade and being capable of handling almost any type of work. The brush method of electroplating, on the other hand, is limited in its scope and purpose and is ordinarily used only for articles which are relatively small and simple. While the brush method serves a useful purpose within its field, it is, generally speaking, incapable of accomplishing results equal to those accomplished by the tank method.

The brush method of electroplating does not work as well on rough as on smooth surfaces, nor as well in recesses or on irregular shapes as on flat, smooth surfaces and regular shapes. Generally speaking, the method works satisfactorily only on surfaces which are relatively

Order

48 F. T. C.

small and smooth and which do not have deep recesses or complicated or irregular shapes.

Nor is the brush method of electroplating new or a new invention. The method or substantially similar methods have been in use for fifty years or more. While respondents' machine and accompanying equipment do possess certain features and improvements which distinguish them from brush electroplater sets generally, the method itself is not new or a new invention.

PAR. 6. The Commission therefore finds that the representations made by respondents with respect to their product, as set forth above, are erroneous, false, and misleading.

PAR. 7. The use by respondents of the false and misleading representations set forth above has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to respondents' product, and the tendency and capacity to cause such portion of the public to purchase respondents' product as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

(a) The acts and practices of the respondents, as found hereinabove, 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.

(b) Additional charges of the complaint pertain to other statements appearing in respondents' advertising and allege in such connection that respondents have falsely represented that, through use of their method of electroplating, it is easy and simple to plate metal articles, that special skill and knowledge is not required to obtain satisfactory results, that worn articles can be replated by a stroke of the brush, and that their method will chromium plate. Other charges are that respondents also have falsely represented in their advertising that, through doing work for others, respondents' device will pay for itself within a week, that a complete set of tools and equipment necessary for satisfactory electroplating is furnished to purchasers, and that respondents are owners of a patent entitling them to exclusive use of the brush method of electroplating. Upon consideration of the testimony and other evidence relating to these charges which were introduced into the record, the Commission is of the opinion that these charges are not sustained by the greater weight of the evidence.

ORDER TO CEASE AND DESIST

This proceeding came on to be heard upon the complaint of the Commission, the answers of respondents, testimony and other evi-

dence introduced before a hearing examiner of the Commission, theretofore duly designated by it, recommended decision of the hearing examiner and the exceptions thereto, and brief of counsel supporting the complaint (no brief having been filed on behalf of respondents and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that the respondents hereinafter named have violated the provisions of the Federal Trade Commission Act:

It is ordered, That respondent Warner Electric Company, a corporation, and its officers, and respondents Michael M. Warner and Raymond E. Brandell, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' device designated "Warner Brush Electroplater" or any device of substantially similar construction, whether sold under the same name or any other name, do forthwith cease and desist from representing directly or by implication:

(1) That results obtained through the use of respondents' device equal those obtained through the use of the tank or immersion method of electroplating.

(2) That respondents' device works as well on rough as on smooth surfaces, as well in deep recesses as on flat, smooth surfaces, or as well on irregular as on regular shapes.

(3) That the brush method of electroplating is new or a new invention.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Archer L. Howard.

It is further ordered, That the charges of the complaint hereinbefore referred to and discussed in paragraph (b) of the Conclusion contained in the Findings as to the Facts and Conclusion of the Commission be, and the same hereby are, dismissed.

It is further ordered, That respondents Warner Electric Company, Michael M. Warner and Raymond E. Brandell 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.

IN THE MATTER OF
CONSOLIDATED MANUFACTURING COMPANY ET AL.

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

Docket 5557. Complaint, May 24, 1948—Decision, Jan. 29, 1952

Where, as under the circumstances of the instant case, respondents were given ample opportunity to make an offer of proof by the hearing examiner and declined to do so, they estopped themselves from later urging, on appeal from the initial decision of the trial examiner, that such proof was available.

A contention, in a proceeding involving the sale in interstate commerce of lottery devices designed and used for the distribution of merchandise by gambling, in which the practices were challenged as unfair or deceptive, that, assuming that the acts were "unfair," the allegations of the complaint had not been sustained as there was no evidence of injury to the public, is without merit, since the Commission and the courts have clearly held in other cases that the sale in interstate commerce of such devices is to the injury of the public and an unfair act and practice in violation of the Federal Trade Commission Act, and proof of further specific injury to the public is unnecessary.

The Commission has jurisdiction over unfair practices in merchandising in interstate commerce, and the courts have repeatedly held that merchandising by gambling in interstate commerce and also the sale in commerce of devices designed and intended to encourage merchandising by gambling are unfair practices in violation of the Act, and a contention that the Commission by prohibiting the sale in commerce of such devices is attempting to police public morals and regulate gambling, and has exceeded its jurisdiction, is without merit.

The Commission takes judicial notice of many decisions of the Federal courts to the effect that merchandising by gambling is contrary to the public policy of the Government of the United States; and in a proceeding in which the Commission challenged the sale in interstate commerce of lottery devices designed and intended for use in merchandising through gambling, and in which it appeared that by the design of certain of respondents' punchboards they encouraged and instructed purchasers in a method of merchandising by gambling, a finding that "the use of respondents' sales plan or methods in the sale of merchandise and the sale of merchandise by and through the use thereof, and by the aid of such sales plan or method" was "a practice contrary to an established public policy of the Government of the United States and in violation of the criminal laws," and constituted "unfair acts and practices in commerce," was correct and fully supported by the facts of record.

Where a corporation and its president, engaged in the manufacture and interstate sale and distribution of push cards and punchboards—which, bearing explanatory legends or space therefor, were designed for use in the sale of merchandise to the consuming public through means of a game of chance, under plans whereby the purchasers of a punch or push who by chance