

Syllabus

IN THE MATTER OF
NUCLEAR PRODUCTS COMPANY

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

Docket 5949. Complaint, Jan. 24, 1952—Decision, Sept. 20, 1952

It is essential, in connection with the offer and sale of devices which contain a potentially dangerous radioactive ingredient, and which are not only useful to adults but interesting and attractive to children, and the dismantling or careless use of which might result in serious injury, that such devices carry a conspicuous and adequate warning notice.

Where a corporation engaged in the manufacture and interstate sale and distribution of two devices which contained radioactive polonium, its "Static-Master" brushes for the removal of static electricity, dust and lint from photographic film and other appliances and its "Static-Master" wands or probes, for use in connection with the teaching of physics and chemistry and in industry for the elimination of static and dust from instruments—

- (a) Represented that polonium was harmless and that its devices could be used safely without any danger of harmful effects upon those who might use or handle them, through such typical statements in periodicals, circulars, and folders as "Static-Master instantly destroys static-surface attraction with polonium, a harmless by-product of the Uranium-Radium series";

The facts being that polonium is extremely dangerous if inhaled into the lungs or ingested, and the mere touching of polonium by the hands can result in contamination and spreading it into the lungs or digestive tract, where tobacco smoked or food eaten has been in contact with the hands;

- (b) Failed to give adequate warning as to the harmful effects which might follow the use or handling of the polonium elements contained in its brushes, and as to the conditions under which they might be safely used, through a difficult-to-read cautionary statement attached to the brush, or through certain matter set forth on the reverse side of a "Certificate" enclosed in the shipping carton in which the possibility of poisoning by ingestion or inhalation of said substance was indicated and warnings as to children and otherwise were included; and

- (c) Similarly failed to give such warning, as respects its said probe or wand upon which there was no label, legend, or designation of any kind, through the inclusion of a cautionary label, similar to that attached to the bottom of the brush, upon the inside of the bottom of the plastic container, or, since issuance of the complaint, through the inclusion of a cautionary statement in the pasteboard carton in which the probe was shipped, containing warnings as to the danger of radiation from polonium through ingestion or inhalation and measures to be taken if accidentally touched or handled, and as to keeping the device away from children;

With tendency and capacity to mislead and deceive members of the purchasing public into the erroneous belief that said devices were safe or would not

Complaint

49 F. T. C.

cause injury under any circumstances and thereby into the purchase and indiscriminate use thereof; and with result of placing in the hands of purchasers potentially dangerous devices without adequate warning:

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

While the inadequate cautionary label on the brush was replaced since the issuance of the complaint by one with larger type and expanded spacing so that it could be read with comparative ease, it was still not distinctive or arresting, and like the original cautionary label, was not conspicuously placed thereon, was not sufficiently large to attract attention, and did not constitute a reasonable warning of the potential dangers that might follow the use or handling of the device.

As respects the probe or wand, the use of the same label attached to the bottom of the plastic box was even less adequate as a reasonable warning of the potential dangers involved, and it was noted that while the largest available surface for any cautionary legend on the device was 1 inch x $\frac{1}{4}$ inch in size, there appeared to be no reason why the handle of the probe could not be otherwise attached so as to make available for such a notice the larger top flat surface.

As respects the enclosure in the carton of the cautionary statements or certificates, such statements, while of benefit, and especially where, as on the brush, there was the statement, "See Instructions", such enclosures by themselves and in the absence of notice directing attention to their existence were inadequate as a warning, since there was no assurance that they would accompany either device after it had reached its destination and was unpacked for use.

Before *Mr. J. Earl Coe*, hearing examiner.

Mr. J. W. Brookfield, Jr. for the Commission.

Hahn & Hahn, of Pasadena, Calif., 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 Nuclear Products Company, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Nuclear Products Company, is a corporation, organized and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 2150 Newport Boulevard in the city of Costa Mesa, California.

Respondent is now and for more than one year last past has been engaged in the manufacture, sale and distribution of devices containing radioactive material designated "Static-Master" brushes for the removal of static electricity, dust and lint from photographic film and other appliances, and "Static-Master" wands for use in connection with the teaching of physics and chemistry.

Respondent causes and has caused its devices, when sold, to be transported from its place of business in Costa Mesa, California, to purchasers thereof located in various other States of the United States. There is now and has been for more than one year last past a course of trade by respondent in said devices in commerce between and among the various States of the United States. The volume of such trade has been and is substantial.

PAR. 2. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said devices, in commerce, the respondent has made certain representations and statements with regard to the nature of the active ingredient in its devices by means of advertisements inserted in periodicals having a general circulation in the various States of the United States and in circulars and folders sent to prospective customers throughout the United States. Among and typical of such statements and representations are the following:

Static-Master instantly destroys static surface attraction with polonium a harmless by-product of the Uranium-Radium series.

PAR. 3. Through the use of the statements referred to in Paragraph Two above, respondent represents that polonium is harmless and that respondent's device can be used safely and is harmless to the user or those handling it.

PAR. 4. The aforesaid statements are false, misleading and deceptive. In truth and in fact, polonium is extremely dangerous if inhaled into the lungs or ingested. The slightest contamination of the hands by touching polonium might result in a person spreading the contamination to his digestive tract by smoking or by eating food which has been touched by the hand. The representation by respondent that polonium is harmless has the tendency and capacity to lead persons into the erroneous belief that both the Static-Master brush and wand may be dismantled or otherwise misused and the polonium handled without injurious effect. Such representation also has the tendency to cause persons to become careless and leave the device in places accessible to children and uninformed persons who might dismantle these devices, come into contact with the polonium and suffer severe injury thereby. While respondent attaches a decal to the Static-Master brush warning against the danger of coming into contact with the polonium, it is so

Decision

49 F. T. C.

small and the letters are so indistinct that it does not adequately disclose the danger. No warning whatsoever is placed upon the Static-Master wand.

PAR. 5. The representation by respondent in its advertising that the polonium in its said devices is harmless and the failure to place a clear and conspicuous warning on the devices themselves as to the conditions under which they may become dangerous has the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said devices are safe and will not cause injury under any condition or circumstance and into the the purchase and indiscriminate use of said devices because of such erroneous and mistaken belief. As a result, respondent places in the hands of the purchasers devices which are potentially dangerous without any warning or adequate warning of such danger.

PAR. 6. The aforesaid practices of 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.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance," dated September 20, 1952, the initial decision in the instant matter of hearing examiner J. Earl Cox, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 24, 1952, issued and subsequently served its complaint in this proceeding upon the respondent, Nuclear Products Company, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After respondent filed its answer in this proceeding, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by counsel for respondent and J. W. Brookfield, Jr., counsel supporting the complaint, may be taken as the facts in this proceeding and in lieu of testimony in support of and in opposition to the charges stated in the complaint and that said statement of facts may serve as the basis for findings as to the facts and conclusion based thereon and order disposing of the proceeding. Respondent expressly requested the right to file proposed findings, conclusion and order. Thereafter, this proceeding

regularly came on for final consideration by said Hearing Examiner upon the complaint, answer thereto, stipulation and proposed findings, conclusions and orders submitted by counsel, oral argument not having been requested, said stipulation having been approved by the Hearing Examiner who, after duly considering the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Nuclear Products Company, is a corporation, organized and doing business under and by virtue of the laws of the State of California with its office and principal place of business located at 2150 Newport Boulevard in the city of Costa Mesa, California.

Respondent is now and for more than one year last past has been engaged in the manufacture, sale and distribution of two devices containing radio-active polonium designated "Static-Master" brushes for the removal of static electricity, dust and lint from photographic film and other appliances, and "Static-Master" wands or probes for use in connection with the teaching of physics and chemistry, and in industry for the elimination of static and dust from instruments.

Respondent causes and has caused its devices, when sold, to be transported from its place of business in Costa Mesa, California, to purchasers thereof located in various other States of the United States. There is now and has been for more than one year last past a course of trade by respondent in said devices in commerce between and among the various States of the United States. The volume of such trade has been and is substantial.

PAR. 2. In the course and conduct of its said business, and for the purpose of inducing the purchase of its said devices, in commerce, the respondent has, until September 1951, made certain representations and statements with regard to the nature of the active ingredient in its devices by means of advertisements inserted in periodicals having a general circulation in the various States of the United States and in circulars and folders sent to prospective customers throughout the United States. Among and typical of such statements and representations is the following:

Static-Master instantly destroys static surface attraction with polonium a harmless by-product of the Uranium-Radium series.

PAR. 3. Through the use of the statements referred to in Paragraph Two above, respondent represents that polonium is harmless and that

Findings

49 F. T. C.

respondent's devices can be used safely without any danger of harmful effects upon those who may use or handle them.

Such representations are false, misleading and deceptive. In truth and in fact, polonium is extremely dangerous if inhaled into the lungs or ingested, and the mere touching of polonium by the hands can result in contamination and in the spreading of such contamination to the lungs through smoking or to the digestive tract through eating where the tobacco smoked or the food eaten has been in contact with the hands. The devices are not only useful to adults but they are also interesting and attractive to children. Any dismantling or careless use of either device might result in serious injury. It is essential, therefore, that each device carry a conspicuous and adequate warning notice.

PAR. 4. The Static-Master brush consists of an inch wide brush with bristles extending approximately $1\frac{1}{8}$ inches beyond the inset which is encased in an irregular box-like stainless steel framework having unbroken exposed surfaces at the top and bottom and on each side. The dimensions of these surfaces are approximately as follows: the top is rectangular, $1\frac{3}{8}$ inches by 1 inch; the bottom is $1\frac{1}{4}$ inches by 1 inch; each side is a quadrilateral with a $1\frac{1}{4}$ inch base and a $1\frac{3}{8}$ inch top sloping from an end $\frac{3}{4}$ of an inch long to another end $\frac{3}{8}$ of an inch in length. The exposed part of the brush handle is of wood $3\frac{1}{2}$ inches long, $\frac{1}{4}$ of an inch thick, and from $\frac{3}{8}$ to $\frac{3}{4}$ of an inch wide; the polonium foil element, .006 of an inch thick, $\frac{1}{4}$ of an inch wide and 1 inch long, faces the brush tip and is recessed $\frac{1}{4}$ of an inch behind a three apertured grill.

The stainless steel framework bears two printed labels. The one pasted on the top contains the legend:

STATIC-MASTER
Nuclear Products Co.
Costa Mesa, California, U. S. A.

The words "Static-Master" appear to be in approximately 8 point type, all caps. The remainder of the legend is smaller but easily readable. The other label pasted on the bottom bears the legend:

CAUTION

Do not touch radioactive strip (under grid). Keep brush away from children. See instructions.

This Static-Master guaranteed until-----

Prior to the issuance of the complaint in this proceeding this label, except for the word "Caution" which might have been in 6 point type, was printed in 4 point or smaller type and was set up and spaced so

as to be difficult to read. Since the issuance of the complaint the size of the printing has been increased to approximately 5 point type and the spacing expanded so that the label can now be read with comparative ease although it is still not distinctive or arresting.

There is no other label, printed matter or legend of any kind upon or attached to any other part of the Static-Master brush but there is now used by the respondent and enclosed in the shipping carton with the brush a certificate which, among other things, indicates the possibility of poisoning by ingestion or inhalation of polonium, and states:

CERTIFICATE

All STATICMASTER units released to the public are hereby certified to be safe when used according to instructions printed on the reverse side of this certificate.

On the reverse side appears the following:

CAUTION

DO NOT take the STATIC-MASTER apart or touch the radio-active strip (under the grid). If strip is touched or handled, wash hands thoroughly before eating or smoking.

Keep away from children who might chew on or take the brush apart.

Polonium, the radioactive substance used in the STATIC-MASTER, is completely harmless externally, and the simple precautions are given to avoid the possibility of taking the metal internally.

The Static-Master probe or wand, hereinafter referred to as a probe, is a small stainless steel box-like device 1 inch by $\frac{1}{2}$ of an inch by $\frac{1}{4}$ of an inch, with a stainless steel handle $\frac{3}{16}$ of an inch in diameter somewhat flattened at one end and welded lengthwise to the middle of the 1 inch by $\frac{1}{2}$ of an inch top surface. The probe, like the stainless steel framework of the brush, contains a recessed polonium foil element behind a three apertured grill.

There is no label, designation or legend of any kind upon any part of the probe, and as presently constructed, the largest available surface for any caution or legend is the 1 inch by $\frac{1}{4}$ of an inch side. There appears, however, to be no reason why the handle of the probe cannot be attached to an end or to the sides rather than to the top of the probe thus making available for a cautionary notice the top flat surface which is 1 inch by $\frac{1}{2}$ of an inch. The probe is packaged in a plastic container upon the inside of the bottom of which is pasted a caution label the same as that attached to the bottom of the brush and described above. The probe then is shipped in a pasteboard carton in which, since the issuance of the complaint, there has been enclosed a printed cautionary notice bearing the following language:

Findings

49 F. T. C.

CAUTION

The radiation from polonium is dangerous if the solid material becomes lodged in the body by ingestion or inhalation. Protection from the possibilities of radiation poisoning is provided in STATICMASTER products as follows:

The radioactive polonium is made into a foil by sealing it between a silver base and a gold covering. The foil is mounted in a stainless steel housing behind a grid to prevent physical contact.

DO NOT take the STATICMASTER apart or touch the radioactive foil under the grid. If the foil is accidentally touched or handled, wash hands thoroughly before eating or smoking. Keep away from children who might put the Probe in their mouth.

Observance of these simple precautions will permit safe use of this new and modern tool for removing static electricity.

The reverse side of this cautionary notice carries instructions for use of the probe.

The cautionary label used on the Static-Master brush has not been and is not now conspicuously placed on said device. It has not been and is not now sufficiently large or printed in adequate size type to arrest the eye or attract attention and does not constitute a reasonable warning of the potential dangers that may follow the use or handling of said device. The use of the same label attached to the bottom of the plastic box in which the Static-Master probe is packaged is even less adequate as a reasonable warning of the potential dangers that may follow the use or handling of the probe.

The enclosure in the shipping carton of the "Caution" or "Certificate," hereinabove described, is of benefit, especially where, as on the brush, there is the statement "See instructions," but by itself and in the absence of notice directing attention to its existence, such an enclosure is inadequate as a warning. There is no assurance that such a notice will be preserved or will accompany either device after it has reached its destination and is unpacked for use.

PAR. 5. The representation by respondent that polonium is harmless and its failure to give adequate warnings as to the harmful effects which may follow the use or handling of the polonium elements contained in its devices and as to the conditions under which said devices may be safely used, has the tendency and capacity to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said devices are safe and will not cause injury under any condition or circumstance and into the purchase and indiscriminatory use of said devices because of such erroneous and mistaken belief. As a result respondent has placed and is placing in the hands of the purchasers devices which are potentially dangerous without any adequate warning of such danger.

CONCLUSION

The aforesaid acts and practices of respondent 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.

ORDER

It is ordered, That the respondent, Nuclear Products Company, a corporation, its officers, agents, representatives and employees, directly 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 devices containing the element polonium as an active ingredient, do forthwith cease and desist from:

1. Representing, directly or by implication, that such devices are safe for use, unless it is clearly and conspicuously disclosed, in immediate connection with the representation, that the polonium in said devices is dangerous to health if inhaled into the lungs or ingested.

2. Representing, directly or by implication, that polonium is harmless.

3. Offering for sale, selling or distributing such devices unless adequate cautionary or warning notices are clearly and conspicuously impressed or imprinted upon said devices or permanently attached thereto, indicating possible harmful effects of ingesting or inhaling polonium and directing the user not to touch the polonium element and to keep the device away from children; provided, however, that such warning or cautionary notices may be condensed if they clearly refer to and are amplified by adequate directions for safe use separately printed and enclosed in the carton or permanent container in which said devices are shipped and kept.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of September 20, 1952].

Complaint

49 F. T. C.

IN THE MATTER OF
BEE JAY PRODUCTS, INC., ET AL.

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

Docket 5736. Complaint, Jan. 25, 1950—Decision, Sept. 29, 1952

Where two corporations and three officers thereof, engaged in the manufacture and interstate sale and distribution of (1) push cards and punchboards, which, bearing explanatory legends or space therefor, were designed for and used only by ultimate purchasers in combination with other merchandise, under plans whereby customers who by chance selected certain specified numbers received articles without additional cost at much less than their normal retail price; and of (2) jar and spindle games for similar use and under similar plans whereby the concealed ticket number entitled the chance purchasers thereof to merchandise or nothing—

Sold and distributed such devices to dealers who incorporated the same in assortments of candy, cigarettes, clocks, razors, cosmetics, clothing and other articles of merchandise, which were exposed and sold or distributed to the purchasing public by means of said devices and in accordance with the aforesaid sales plans, by the direct or indirect retail purchasers thereof; and

Thereby supplied to and placed in the hands of others the means of conducting lotteries, games of chance or gift enterprises in the sale or distribution of their merchandise, contrary to an established public policy of the United States Government, and means for engaging in unfair acts and practices;

With the result that many members of the public were induced to trade with retailers who thus sold or distributed such merchandise; many retailers were induced to deal with suppliers of such products; and gambling among members of the public was taught and encouraged:

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

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

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. F. W. James, of Evanston, 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 Bee Jay Products, Inc., a corporation, and Joseph Berkowitz, Reuben Berkowitz and Maurcy M. Ball, individuals and officers of Bee Jay Products, Inc.,