

Complaint

49 F. T. C.

IN THE MATTER OF

RUDOLPH R. SIEBERT, TRADING AS RUDOLPH R.
SIEBERT COMPANY AND AS R. R. SIEBERT COMPANY

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

Docket 6085. Complaint, Mar. 18, 1953—Decision, June 6, 1953

Where an individual engaged in the manufacture and interstate sale and distribution of a liquid silver polish designated "Pernet", which, containing about 30% carbon tetrachloride, bore no warning as to the dangers attendant upon its use, and was guaranteed in advertising as containing no "abrasives, cyanide or other harmful materials used in some silver polishes", with "nothing injurious or harmful", and as not harming the skin—

Represented directly and by implication that said product contained no injurious or harmful ingredients and was safe under all conditions of use as a silver polish, through aforesaid statements and failure to place a warning on the label thereof; when, in fact, by virtue of its tetrachloride content, it was a poison, the fumes of which, inhaled, might cause serious illness or even death, in a closed room, in absence of adequate ventilation, and might cause injury to the skin when contact therewith was frequent or prolonged; With effect of deceiving a substantial portion of the purchasing public into the erroneous belief that said product was safe under all conditions of use, and inducing purchase and use of substantial quantities thereof under potentially dangerous conditions, and with capacity and tendency so to do; and with result of placing in the hands of retailers and others a means whereby prospective purchasers and users might be deceived and misled:

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

Before *Mr. John Lewis*, hearing examiner.

Mr. Harold A. Kennedy for the Commission.

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 Rudolph R. Siebert, an individual 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,

1418

Complaint

hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Rudolph R. Siebert is an individual trading as Rudolph R. Siebert Company and as R. R. Siebert Company with its principal place of business located at 183 St. Paul Street, Rochester, New York.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the manufacture, sale and distribution of a liquid silver polish designated as "Pernet" which contains approximately thirty percent carbon tetrachloride.

The instructions for use appearing on the label of said product are as follows:

Shake before Using

Saturate a small piece of cheese cloth with polish and rub surface lightly. When dry polish lightly with soft flannel cloth. For chased or filagree work use soft brush.

Respondent causes his said product, when sold, to be transported from his place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein, has maintained a course of trade in said product in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his silver polish, respondent has been and is now distributing an advertising circular to retailers and consumers containing the following false, deceptive and misleading statements:

We guarantee that it does not contain any abrasives, cyanide or other harmful materials used in some silver polishes.

There is nothing injurious or harmful in Pernet. Does not harm the skin.

PAR. 4. Through the use of said statements and through failure to place a warning on the label of said product of the dangers attendant upon its use, respondent has represented and is now representing directly and by implication that said product contains no injurious or harmful ingredients and is safe under all conditions of use as a silver polish.

PAR. 5. The aforesaid representations are false, deceptive, and misleading. In truth and in fact, respondent's said product, because of its carbon tetrachloride content, is a poison, and inhaling its fumes may cause serious illness or even death, when the product is used in

a closed room or in any place without adequate ventilation. When contact with said preparation is frequent or prolonged, it may cause injury to the skin.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and his failure to adequately warn the purchasing public of the dangers attendant upon the use of his product has had and now has the capacity and tendency to and does deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said product is safe under all conditions of use, and into the purchase and use, under potentially dangerous conditions, of substantial quantities of said product.

Respondent further has by his said acts placed in the hands of retailers and others a means and instrumentality whereby prospective purchasers and users may be deceived and misled as aforesaid.

PAR. 7. 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 June 6, 1953, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on March 18, 1953, issued and subsequently served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the service of said complaint upon said respondent a stipulation as to the facts was entered into and signed by respondent and by Harold A. Kennedy, counsel supporting the complaint, for the Federal Trade Commission, said stipulation being approved by William M. King, Chief, Division of Litigation, whereby it was stipulated and agreed that, subject to approval of the hearing examiner, a statement of facts therein set forth may be made a part of the record and taken as the facts in this proceeding and in lieu of evidence in support of the charges stated in the complaint, or in opposition thereto, and that the hearing examiner may proceed upon said statement of facts to make his Initial Decision stating his findings as to the facts, including inferences which he may draw from the said stipulation of

1418

Findings

facts, and his conclusion based thereon, and enter his order disposing of the proceeding, without the filing of proposed findings and conclusions or the presentation of oral argument. Said stipulation expressly provides that the Commission may, if the proceeding comes before it upon appeal from the Initial Decision of the hearing examiner or by review upon the Commission's own motion, set aside the stipulation and remand the case to the hearing examiner for further proceedings upon the complaint. Thereafter, this proceeding regularly came on for final consideration by the above-named hearing examiner, theretofore duly designated by the Commission, upon the complaint, and the aforesaid stipulation as to the facts, said stipulation having been approved and made part of the record 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 Rudolph R. Siebert is an individual trading as Rudolph R. Siebert Company and as R. R. Siebert Company with his principal place of business located at 183 St. Paul Street, Rochester, New York.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the manufacture, sale and distribution of a liquid silver polish designated as "Pernet" which contains approximately thirty percent carbon tetrachloride.

The instructions for use appearing on the label of said product are as follows:

Shake before Using.

Saturate a small piece of cheese cloth with polish and rub surface lightly. When dry polish lightly with soft flannel cloth. For chased or filagree work use soft brush.

Respondent causes his said product, when sold, to be transported from his place of business in the State of New York to purchasers located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein, has maintained a course of trade in said product in commerce, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his silver polish, respondent, up to August 1, 1952, distributed an advertising circular to retailers and consumers containing the following statements:

Order

49 F. T. C.

We guarantee that it does not contain any abrasives, cyanide or other harmful materials used in some silver polishes.

There is nothing injurious or harmful in Pernet. Does not harm the skin.

PAR. 4. Through the use of said statements respondent has represented, and through the failure to place a warning on the label of said product of the dangers attendant upon its use, respondent has represented and is now representing, directly and by implication, that said product contains no injurious or harmful ingredients and is safe under all conditions of use as a silver polish.

PAR. 5. The aforesaid representations are false, deceptive, and misleading. In truth and in fact, respondent's said product, because of its carbon tetrachloride content, is a poison, and inhaling its fumes may cause serious illness or even death, when the product is used in a closed room or in any place without adequate ventilation. When contact with said preparation is frequent or prolonged, it may cause injury to the skin.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and his failure to adequately warn the purchasing public of the dangers attendant upon the use of his product has had and now has the capacity and tendency to and does deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that said product is safe under all conditions of use, and into the purchase and use, under potentially dangerous conditions, of substantial quantities of said product.

Respondent further has by his said acts placed in the hands of retailers and others a means and instrumentality whereby prospective purchasers and users may be deceived and misled as aforesaid.

CONCLUSION

The acts and practices of respondent, as hereinabove found, 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 respondent Rudolph R. Siebert, an individual trading as Rudolph R. Siebert Company and as R. R. Siebert Company, or under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of Pernet silver polish, or any other product of substantially similar composition, whether sold under the same name or under any other name,

1418

Order

in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

- (1) Representing directly or by implication that said product contains nothing injurious or harmful or that it will not harm the skin;
- (2) Failing to disclose on the label of said preparation:
 - (a) that it should not be taken internally,
 - (b) that its fumes or vapors are harmful and that said product should only be used with adequate ventilation, and
 - (c) that when contact with said preparation is frequent or prolonged it may cause injury to the skin.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of June 6, 1953].

Order

49 F. T. C.

IN THE MATTER OF
CARTER PRODUCTS, INC., AND SMALL & SEIFFER, INC.

Docket 4960. Order, June 8, 1953

Order further modifying prior order of Commission, as theretofore modified on May 24, 1951, 47 F. T. C. 1348, in accordance with the opinion and decision of the Court of Appeals for the Seventh Circuit on February 2, 1951, in *Carter Products, Inc. et al. v. Federal Trade Commission*, 186 F. (2d) 821, and the court's final decree in said matter (which modified and affirmed, as modified, the Commission's said cease and desist order to *Carter Products, Inc. et al.*, July 14, 1949, 46 F. T. C. 64) ;

So as to permit respondents to represent through the modification of Paragraph 1 (e) of said prior cease and desist order, that respondents' preparation "Arrid" is safe for use on normal skin, as in said order below set out.

Before *Mr. Everett F. Haycraft*, hearing examiner.

Mr. R. P. Bellinger for the Commission.

Breed, Abbott & Morgan, of New York City, for respondents.

ORDER (1) GRANTING RESPONDENTS' PETITION TO MODIFY ORDER TO CEASE
AND DESIST AND (2) MODIFYING SUCH ORDER

This matter came on to be considered by the Commission upon the petition of respondents for further modification of Paragraph 1 (e) of the modified order to cease and desist issued herein by the Commission on May 24, 1951. This portion of the order requires respondents to cease and desist from disseminating in commerce, or disseminating by any means for the purpose of inducing or which is likely to induce the purchase in commerce of the cosmetic product "Arrid," any advertisement which represents:

"That said preparation is safe or harmless to use without disclosing that it may cause irritation of sensitive skin."

Respondents ask that this provision be so modified as to permit them to represent that the product is safe for use on normal skins.

Counsel supporting the complaint does not object to the granting of the petition to the extent of modifying the said provision to read:

"That said preparation is safe and harmless, unless limited to normal skin."

The Commission having considered the matter, and being of the opinion that modification of the said order in the manner requested by respondents is consonant with its action in other cases involving competitive preparations: