

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:

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It is ordered, That respondents' petition be, and the same hereby is, granted; and

It is further ordered, That Paragraph 1 (e) of the modified order to cease and desist issued by the Commission herein on May 24, 1951, be, and the same hereby is, further modified to read as follows:

"That said preparation is safe and harmless, unless such representation is limited to safety and harmlessness for normal skins."

NOTE.—Said modified order of May 24, 1951, 47 F. T. C. 1348, read as follows:

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, testimony and other evidence in support of the complaint and in opposition thereto, taken before a trial examiner of the Commission theretofore duly designated by it, the recommended decision of the trial examiner and exceptions filed thereto, briefs filed in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act and issued its order to cease and desist on July 14, 1949; and

Respondents having filed in the United States Court of Appeals for the Seventh Circuit their petition to review and set aside the order to cease and desist issued herein, and that Court having heard the matter on briefs and oral argument, fully considered the matter, and, on February 20, 1951, entered its final decree modifying and affirming, as modified, the aforesaid order to cease and desist pursuant to its opinion announced on February 2, 1951:

Now therefore it is hereby ordered, That respondents, Carter Products, Inc., a corporation, and Small & Seiffer, Inc., a corporation, and their respective agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of a cosmetic preparation designated "Arrid," or any other product of substantially similar composition or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

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(a) That the application of said preparation stops underarm perspiration; provided, however, that nothing herein shall prevent the respondents from representing that the use of Arrid will prevent the appearance of perspiration when used as directed, namely, "daily" or "as frequently as you find necessary."

(b) That said preparation will keep the armpits dry or odorless, provided that nothing herein shall prevent respondents from representing that the use of Arrid will keep the armpits dry or odorless when used as directed, namely, "daily" or "as frequently as you find necessary."

(c) That the use of said preparation immediately after shaving will not irritate the skin.

(d) That said preparation will prevent the accumulation of odor-creating secretions or excretions in the armpits, provided that nothing herein shall prevent respondents from representing that the use of Arrid will prevent the accumulation of odor-creating body secretions or excretions in the armpits when used as directed, namely, "daily" or "as frequently as you find necessary."

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

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in Paragraph 1 hereof.

It is further ordered, That the respondents shall, within ninety (90) days after the entry of the aforesaid decree by the United States Court of Appeals for the Seventh Circuit, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Syllabus

IN THE MATTER OF
SAYLES FINISHING PLANTS, INC., SPECIAL FABRICS,
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 5878. Complaint, May 3, 1951—Decision, June 10, 1953

Where four corporate manufacturers of starch-filled or pyroxylin-impregnated book cloth, and sales subsidiary of one, constituting a substantial proportion of the interstate sellers of said product, and sellers of a major part of all the book cloth sold to dealers and consumers in the United States—
Engaged in practices, discussions, common understandings, and courses of action relative to the establishment of prices, terms, and conditions of sale in interstate commerce of such product; and in pursuance of such practices, etc.; as the case might be—

- (1) Discussed with others of their number, changes in prices for book cloth, including discounts and terms and conditions of sale under which they offered to and did sell the cloth;
- (2) Changed their method of pricing so as to eliminate quantity discounts and adopted in lieu thereof a uniform quantity to which list prices would be applied, with uniform premium charges for lesser quantities;
- (3) Adopted uniform premium charges for specified services in connection with the manufacture of book cloth, e. g., embossing;
- (4) Changed their freight allowance policy so as to eliminate free delivery points and adopted in lieu thereof the policy of allowing full freight to all customers located east of the Mississippi River and purchasing roll lots or more, and selling f. o. b. St. Louis, Missouri, to customers located west of said Mississippi River and purchasing like quantities; and
- (5) Increased their prices from time to time:

Held, That such acts and practices, under the circumstances set forth, tended to lessen competition, were oppressive to the public interest and unfair within the intent and meaning of the Federal Trade Commission Act, and, if not checked, would unduly suppress competition; and that said interest and the provisions of the Act required the restraining of said respondents involved by appropriate order to cease and desist.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Lynn C. Paulson and *Mr. Joseph J. Gercke* for the Commission.

Mr. Raymond S. Smethurst, of Washington, D. C., and *Edwards & Angell*, of Providence, R. I., for Sayles Finishing Corp. and Special Fabrics, Inc.