

Opinion

IN THE MATTER OF
WILL-WELD MANUFACTURING COMPANY ET AL.

Docket 5922. Complaint, Sept. 11, 1951—Order, Nov. 24, 1954

Order setting aside cease and desist order issued Mar. 13, 1952, 48 F. T. C. 965, and dismissing complaint for the reason that said order went further than necessary to apprise users of potential dangers involved in the use of respondents' welding machines and also required respondents to make considerably more disclosures as to such dangers than other sellers of similar products were required to make; the matter being settled by respondents' subsequent execution of an informal stipulation and agreement to cease and desist.

Before *Mr. Webster Ballinger*, hearing examiner.
Mr. John M. Russell for the Commission.

OPINION OF THE COMMISSION

Per CURIAM:

The Commission on September 11, 1951, issued its complaint against the respondents charging them with the use of unfair and deceptive acts and practices in connection with the advertising and sale of unassembled home welding machines. Respondents filed their answer denying the material allegations of the complaint. Thereafter a hearing was held in Washington, D. C., before a hearing examiner of the Commission at which five pieces of advertising material used by the respondents were introduced in evidence and the testimony of an electrical safety engineer employed by the National Bureau of Standards was taken. Respondents were not represented at this hearing and they did not exercise their right to request a hearing for the purpose of taking testimony in opposition to the complaint.

The hearing examiner on December 29, 1951, filed his initial decision in which he found the facts to be substantially as alleged in the complaint and ordered the respondents to cease and desist from:

(1) Representing, directly or indirectly, that their electric home welding machine, made by the assembling of the various parts sold by them for a complete machine, will operate consistently and safely on the electric circuit ordinarily found in a home with a 30 ampere fuse.

(2) Selling or offering for sale their electric home welding machine without, in large type appearing in all literature relating thereto, expressly informing the purchaser or purchasers that their home welding machine cannot be safely connected with the electric current

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ordinarily found in a home by an ampere fuse in excess of 15 amperes and that the use of a larger fuse may cause an overloading of the electric circuit and produce a dangerous fire-hazard condition.

Respondents filed a notice of their intention to appeal from this decision of the hearing examiner but the appeal was not perfected. The Commission on March 13, 1952, adopted the hearing examiner's decision as its decision.

Upon our own motion we have reconsidered our decision in this matter. We have also considered our action in other matters involving similar advertising representations. It now appears that the order goes further in its requirements than is necessary to adequately apprise users and prospective users as to the potential dangers involved. It also appears that the order in this case requires the respondents to make considerably more disclosures with respect to the dangers involved in the use of their welding machines than we have required other sellers of similar products to make.

Subsequent negotiations between the Commission's Bureau of Consultation and the respondents have resulted in the execution by the respondents of an informal stipulation as to the facts and agreement to cease and desist in which the respondents agree to cease and desist from offering for sale or selling for home use their welding machine, assembled from the various parts sold by them for a complete machine:

(1) Without making in all their advertising a clear and affirmative disclosure as to the proper wiring and fusing of the circuit on which the machine is used; and

(2) Unless on said welder, or accompanying it, there is a notice as to the proper wiring and fusing of the circuit on which the machine is used, together with a clear "Warning" or "Caution" that failure to follow this direction may create a dangerous fire hazard.

It is our opinion that this stipulation and agreement to cease and desist is adequate and appropriate to prevent a continuation or resumption of the unfair and deceptive acts and practices in which the respondents were found to have engaged and that it would be in the public interest to reopen this proceeding, vacate and set aside the order to cease and desist, and dismiss the complaint without prejudice. An order to that effect will be entered.

ORDER REOPENING PROCEEDING, VACATING AND SETTING ASIDE ORDER TO
CEASE AND DESIST AND DISMISSING COMPLAINT WITHOUT PREJUDICE

The Commission, on its own motion, having reconsidered its decision of March 13, 1952, in this matter, and having determined, for

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the reasons appearing in the accompanying opinion, that this proceeding should be reopened; that the order to cease and desist should be vacated and set aside; and that the complaint should be dismissed without prejudice:

It is ordered, That this proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist entered herein on March 13, 1952,¹ be, and it hereby is, vacated and set aside.

It is further ordered, That the complaint herein be, and it hereby is, dismissed without prejudice to the right of the Commission to institute further proceedings should the facts warrant such action.

¹ See 48 F. T. C. 965.

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IN THE MATTER OF

CHARLES ANTELL, INC. ET AL.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO CEASE
AND DESIST, AND OPINION OF THE COMMISSION*Docket 6102. Order and Opinion, Nov. 26, 1954*

Order modifying cease and desist order of December 19, 1953,¹ to bring it into conformity with the stipulated facts so as to prohibit representations that the main ingredient from a percentage standpoint in respondents' product "Charles Antell Formula No. 9" was lanolin, and that said product would remedy the cause of cracked or split hair.

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Pencke for the Commission.

Mr. Bernard H. Herzfeld, of Baltimore, Md., for respondents.

Modified Order

It is ordered, That the respondent Charles Antell, Inc., a corporation, and its officers and respondents, Charles D. Kasher, Leonard L. Rosen and Julius J. Rosen, individually, and respondent T. A. A., Inc., a corporation, and its officers, and respondents' respective agents, representatives and employees, directly or through any corporate, or other device, in connection with the offering for sale, sale or distribution of Charles Antell Formula No. 9 and Charles Antell Shampoo, or any products of substantially similar composition or possessing substantially similar properties, whether sold under the same names or any other names, do forthwith cease and desist from, directly or indirectly:

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

(a) With respect to Charles Antell Formula No. 9:

(1) That the main ingredient in said product from a percentage standpoint is lanolin;

(2) That lanolin is the only natural oil or grease that is absorbed by the hair or scalp or that the lanolin in said product is absorbed by the scalp to the extent that it will reach the roots of the hair;

(3) That the lanolin in said product will cleanse the hair;

¹ 50 F. T. C. 543.