

IN THE MATTER OF

PERMANENT STAINLESS STEEL, INC., AND PRESSED
STEEL CAR COMPANY, INC. (NOW KNOWN AS U. S.
INDUSTRIES, INC.)ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6010. Complaint, July 17, 1952—Decision, Feb. 14, 1955*

Order requiring a manufacturer of stainless steel cooking utensils with general offices in Chicago, and its corporate sales agent in Houston, Tex., to cease representing falsely—chiefly by means of demonstrations of said products before groups of prospective buyers at which time advertising matter supplied by the manufacturer was distributed—that the consumption of food cooked or kept in aluminum utensils would cause cancer and was hazardous to health, and that preparation of food in aluminum caused formation of dangerous poisons; that use of their utensils would promote and insure better health, was necessary to health, would prevent gallstones and stomach troubles and help build up a good digestive system; and to cease making false representations concerning the therapeutic effects of various mineral elements in the diet.

Before *Mr. Abner E. Lipscomb*, hearing examiner.

Mr. R. P. Bellinger and *Mr. Joseph Callaway* for the Commission.

Hamblen & Bobbitt, of Houston, Tex., and *Patterson, Belknap & Webb*, of New York City, for Permanent Stainless Steel, Inc.

Olvine, Connelly & Chase, of New York City, and *Steptoe & Johnson*, of Washington, D. C., for U. S. Industries, Inc.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint in this proceeding charges the two respondents with making false representations and disparaging statements relative to aluminum cooking ware, in connection with the sale and distribution of stainless steel cooking utensils, in violation of the Federal Trade Commission Act. Subsequent to the submission of respondents' answers and the receiving of evidence in support of and in opposition to the allegations of the complaint, a stipulation as to the facts was entered into by and between counsel for respondents and counsel supporting the complaint.

Under the terms of this stipulation all the factual issues in controversy are resolved except that pertaining to the responsibility of respondent Pressed Steel Car Company, Inc. for the false representations and disparaging statements made orally by the salesmen em-

ployed by respondent Permanent Stainless Steel, Inc. in connection with the sale of stainless steel cooking utensils. The evidence concerning this issue, consisting of Commission's Exhibits 5, 7 and 43 through 48 inclusive, and the testimony of Witnesses Reed, Davis, Marcy, Hastings and Kusch, is adopted by reference in the stipulation, and the initial responsibility for its factual interpretation is entrusted to the Hearing Examiner. Accordingly, the exclusive basis for the findings as to the facts and conclusions hereinafter made is the aforesaid stipulation, including the evidence adopted therein by reference.

1. Respondent Permanent Stainless Steel, Inc., hereinafter referred to as Respondent Permanent, is a Texas corporation, with its office and principal place of business located at 5609 Alameda Street, Houston, Texas. Respondent Pressed Steel Car Company, Inc., hereinafter referred to as Respondent Pressed Steel, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with general offices located at 6 North Michigan Avenue, Chicago, Illinois.

2. In December, 1949, Respondent Pressed Steel purchased the business of the Solar-Sturges Manufacturing Company, including its cookware division. Thereafter, since January, 1950, Respondent Pressed Steel has been and now is engaged in the business of manufacturing and selling stainless steel cooking utensils under the name of Solar-Sturges Manufacturing Division of Pressed Steel Car Company, Inc. The cooking utensils so manufactured and sold are designated "Permanent Stainless Steel," and the trade mark bearing this brand name is impressed on each piece of stainless steel cookware made and sold by Solar-Sturges Manufacturing Division of Respondent Pressed Steel.

3. Prior to 1950, Respondent Permanent operated its business under a franchise as the exclusive distributor of Permanent Stainless Steel cookware in the States of Texas, New Mexico, Arizona and Oklahoma for the Solar-Sturges Manufacturing Company. On May 1, 1950, Respondent Pressed Steel renewed the aforesaid franchise by an agreement with Respondent Permanent.

4. Respondent Pressed Steel causes and has caused said stainless steel cookware, upon order, to be transported from its place of business in the State of Illinois to Respondent Permanent at its place of business in the State of Texas. Respondent Permanent is now, and for several years last past has been, engaged in the sale and distribution in commerce of said product, and has caused some of said product,

when sold, to be transported from its place of business in the State of Texas to purchasers thereof in other states of the United States.

In the course and conduct of their business, as aforesaid, respondents are now and have been in substantial competition with other corporations and parties likewise engaged in the business of selling and distributing cooking utensils in commerce between and among the various states of the United States. The volume of respondents' business in cooking utensils in commerce has been and is substantial.

5. Respondent Pressed Steel has sold and sells its cooking utensils to Respondent Permanent, which, in turn, has sold and sells said product to the ultimate purchasers principally by personal solicitation through the medium of its agents and representatives, hereinafter called dealers. None of the capital stock of Respondent Permanent is owned by Respondent Pressed Steel. Respondent Permanent's sales are not limited to products manufactured by Respondent Pressed Steel.

6. The principal method of selling employed by Respondent Permanent's dealers has been by the giving of dinners and demonstrations before groups of prospective purchasers. At such dinner parties sales talks have been made and are made with respect to claimed advantages of Permanent Stainless Steel cooking utensils in connection with the preparation of food, and with respect to claimed disadvantages of the cooking utensils of competitors, particularly those made of aluminum. The material for such sales talks has been furnished to the dealers by Respondent Permanent. Both the demonstrations and sales talks have created the false impression among some purchasers and prospective purchasers in commerce that the consumption of food cooked or kept in aluminum utensils will endanger health by causing serious and dangerous poisons or specific diseases such as cancer, arthritis, polio, etc. Such demonstrations and sales talks have further created the false impression among some purchasers and prospective purchasers in commerce that the use of Respondent Permanent's cooking utensils will be conducive to health by building up a good digestive system and by preventing gall stones and stomach trouble.

Aluminum has been used in the manufacture of cooking utensils for many years. During that period of time, it has been found to be a highly satisfactory material for use in cooking utensils. The consumption of food cooked or kept in aluminum utensils is neither detrimental nor hazardous to the health of the users thereof by reason of the use of aluminum utensils; no poisons are formed from the preparation of foods in aluminum utensils.

7. Respondent Permanent has made statements by means of brochures and pamphlets distributed in commerce to the effect that

"Dr. Mayo, the well-known physician and surgeon, has stated that 'most diseases are traceable to faulty diet.'"; and that "Water, used in cooking, transmits, as a consequence, 212° F. heat into food and destroys as much as 45% to 55% of the mineral contents in these foods," which statements were and are false.

Respondents Permanent and Pressed Steel have falsely represented by means of advertising material distributed in commerce, that the sulphur, phosphorus, chlorine, fluorine, iodine, and other mineral elements contained in food intended for human consumption, are destroyed, damaged, or injured by the heat resulting from cooking methods other than Respondent Permanent's.

8. Respondents Permanent and Pressed Steel have also falsely represented, by means of a brochure, distributed in commerce, which depicted a child, under the heading "Food for Health," flanked by representations associating certain functions or structures of the body with certain specified mineral elements, and stating that silicon is a necessary nutrient for well-being; sodium and chlorine for the complexion; iodine, calcium and phosphorus for the heart; chlorine and sodium for the joints; phosphorus for the nails; fluorine for the bones; potassium and chlorine for shapeliness; chlorine and sodium for clear skin; magnesium, sulphur, sodium and iron for proper digestion; phosphorus, iodine and manganese for the nerves; magnesium and phosphorus for the blood; and sodium for the ligaments.

A printed chart or table included in said brochure reads as follows:

<i>Essential Organic Mineral Salts</i>	<i>Effects</i>
Sulphur—	Purifies—tones system—intensifies feeling and emotions
Brain, Nerves, Liver	
Phosphorus—	Nourishes the brain cells: builds power of thought; stimulates growth of hair and bone.
Brain, * * *	
Calcium—	* * *; gives vitality, endurance; heals wounds; counteracts acid.
* * * Lungs	
Magnesium—	Relaxes nerves; refreshes system. Prevents and relieves constipation.
Nerves, Intestines	
Potassium—	Liver activator; strongly alkaline; makes tissues elastic, muscles supple, creates grace, beauty, good disposition.
Tissue, Glands	
Chlorine—	Cleans; expels waste; freshens; purifies, disinfects.
Glands, Intestines	
Fluorine—	Strengthens; cements, builds resistance; hardens.
Lungs, Tendons, Veins	
Sodium—	Aids digestion; counteracts acidosis; halts fermentation; purifies blood; dissolves congestion.
Glands, Stomach, Blood	

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<i>Essential Organic Mineral Salts</i>		
Iodine—		<i>Effects</i> * * *; normalizes gland and cell action; ejects, and counteracts poisons.
Glands, Brain		
Silicon—		Gives keen hearing; sparkling eyes, pearly teeth and nails; glossy hair; tones system.
Nails, Skin, Teeth, Hair		
Manganese—		Increases resistance; strengthens; co-ordi- nates thought and action; improves memory.
Heart, Brain, Tissues		

The use of the above-described brochure, Commission's Exhibit 5, was discontinued by respondents in May, 1952.

9. By means of the aforesaid printed chart or table, respondents have falsely represented and implied that sulphur purifies and tones the human system and intensifies feeling and emotions; that phosphorus nourishes the brain cells; builds power of thought, and stimulates the growth of the hair; that calcium gives vitality and endurance, heals wounds, and counteracts acids; that magnesium relaxes nerves, refreshes the human system, prevents and relieves constipation; that potassium is a liver activator, makes tissues elastic and muscles supple, creates grace, beauty, and a good disposition; that chlorine cleans, freshens, purifies, disinfects, and expels waste from the human body; that fluorine has a beneficial effect on the lungs, tendons and veins by strengthening, cementing, hardening and building the resistance of those tissues, tendons and veins; that sodium aids digestion, counteracts acidosis, halts fermentation, purifies blood, dissolves congestion; that iodine normalizes glands and cell action and ejects and counteracts poisons; that silicon gives keen hearing, sparkling eyes, pearly teeth and nails, and glossy hair, and tones the human system; that manganese increases resistance, strengthens thought and action, and improves memory.

10. Minerals are not appreciably damaged or destroyed by the heat used in any method of cooking. Vitamin C and some elements of the Vitamin B complex are destroyed by prolonged high temperatures; other vitamins are not. Depending upon the solubility of the compound in which they occur in foods, minerals and Vitamins B₁ and C are leached out in boiling water. If the water is not consumed as part of the diet, there is a loss of these food elements. The amount of loss depends on the amount in the food before cooking, which in turn depends on the soil in which grown, the manner of harvesting and storage, and the exposure to light and air between maturity and preparation.

11. As previously stated, at the giving of dinner parties and demonstrations before groups of prospective purchasers, advertising literature has at times been distributed to prospective purchasers. Two of

such advertising folders, known herein as Commission's Exhibits 5 and 7, have been, at Respondent Permanent's request, printed and sold to it by Respondent Pressed Steel. Commission's Exhibit 5 consists of a printed folder which describes Permanent Stainless Steel cookware, presents a "Food for Health" chart, describes the free dinner party offered to prospective purchasers, and states that, after the dinner,—

We give a brief talk on the benefits of health cooking * * *. We even clear the table and wash the dishes. This is our method of demonstrating and advertising our product and to further show our appreciation for the privilege of using your home we present you a beautiful gift—free.

The entire advertisement is over the name of Respondent Pressed Steel, and the name of Respondent Permanent does not appear thereon.

Commission's Exhibit 7 consists of a folder substantially the same as Commission's Exhibit 5, except for the omission therefrom of the "Food for Health" chart. Both of these folders ask the interested public to "Let us demonstrate in your home how Permanent cookware seals in food values and flavors."

The use in the above-described advertising literature of the words "we," "our" and "us," with its specific authorization for oral statements by salesmen contained in the words "We give a brief talk," over the name of Respondent Pressed Steel, created the appearance to prospective purchasers that the salesmen presenting such literature and giving such talk were the authorized agents and spokesmen for the manufacturer of the cookware described therein. Indeed, Respondent Pressed Steel as well as Respondent Permanent admit in the stipulation as to the facts that they distributed false statements through the medium of these folders or brochures. The active cooperation of Respondent Pressed Steel with its distributors and salesmen in promoting the retail sale of Permanent Stainless Steel cookware is further shown by its solicitation of salesmen in the July, 1950 issue of Specialty Salesman Magazine, in an advertisement addressed only to prospective salesmen. Therein Respondent Pressed Steel invited such persons to become salesmen of Permanent Stainless Steel cookware, and to work with established distributors in their own territory. In such advertisement, interested prospective salesmen were invited to submit information concerning themselves to Respondent Pressed Steel.

Furthermore, the continued effort on the part of Respondent Pressed Steel to create in the public mind confidence in the salesmen promoting its product and to obtain thereby an increased volume of sales thereof is shown by the publication, subsequent to the issuance of the complaint, in the November, 1952, and January, 1953, issues of Good

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Housekeeping Magazine and Parents' Magazine, of an advertisement of Permanent Stainless Steel cookware, in which Respondent Pressed Steel represents that "Each Permanent cookware representative is a reliable businessman bonded after careful investigation." In the July, 1953 issue of Good Housekeeping Magazine, Respondent Pressed Steel invites the public to "Welcome your authorized Permanent representative when he calls for an appointment."

In the face of the above facts, Respondent Pressed Steel contends that it is not responsible for the oral statements made by the salesmen of stainless steel cookware at the free dinner parties which were offered in the printed advertisements prepared by Respondent Pressed Steel, and for which it acknowledges responsibility. This contention is based upon the technical theory that Respondent Pressed Steel is legally insulated from the retail distribution of its product, in that Respondent Pressed Steel manufactures and sells its product to independent distributors, who in turn distribute it to the purchasing public through salesmen, called dealers, who are not Respondent Pressed Steel's employees, but persons over whom it has no control.

This contention is diametrically opposed to the basic concept of fair dealing implicit in the Federal Trade Commission Act. No manufacturer can, in justice, foster in the minds of prospective purchasers the impression that a salesman selling its product is its authorized representative and demonstrator therefor, and thereafter, having enjoyed, through the efforts of such salesman, a substantial volume of sales of such product, disclaim responsibility for the false representations, either oral or written, by means of which such sales were made.

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The acts and practices of each respondent, as set forth above, have had the capacity and tendency to mislead and deceive a substantial number of the purchasing public into believing that the false representations and false impressions created thereby were true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products. As a result thereof, trade has been unfairly diverted to the respondents from their competitors, in consequence of which substantial injury has been done by respondents to competition in commerce between and among the various states of the United States.

The methods, acts and practices of respondents, as hereinabove found, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and prac-

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tices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. Accordingly, it is concluded that this proceeding is in the public interest, and that respondents should be required to cease and desist from such practices, as follows:

ORDER

It is ordered, That the respondents, Permanent Stainless Steel, Inc., a corporation, and U. S. Industries, Inc., a corporation, formerly known as Pressed Steel Car Company, Inc., a corporation, and their 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 cooking utensils made of stainless steel, or any other products of substantially similar composition, design, construction or purpose, do forthwith cease and desist from representing, directly or by implication:

1. That the consumption of food cooked or kept in aluminum utensils will cause cancer, or is in any way detrimental or hazardous to the health of the users.

2. That the preparation of food in aluminum utensils causes the formation of poisons.

3. That cooking food in utensils in which water is used, or by any method or process other than in respondents' utensils, will, by reason of the heat or otherwise, result in appreciable damage or destruction to minerals.

4. That the use of respondents' cooking utensils will promote or insure health, or is any more conducive to health than the use of any other recognized cooking utensils.

5. That the use of respondents' said products will be of any benefit in the prevention of gall stones or stomach troubles, or in building up a good digestive system.

6. That the sulphur, phosphorus, chlorine, fluorine, iodine, or any other mineral elements contained in food intended for human consumption, are destroyed, damaged or injured by the heat resulting from cooking methods other than respondents'.

7. That silicon is essential for proper human nutrition.

8. That sodium or chlorine has any specific effect on the complexion or the skin; iodine, calcium or phosphorus on the heart; chlorine or sodium on the joints; phosphorus on the nails; fluorine on the bones; potassium or chlorine on shapeliness; magnesium, sulphur, sodium or iron on the digestion; phosphorus, iodine or manganese on the

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nerves; magnesium or phosphorus on the blood; or sodium on the ligaments.

9. (a) That sulphur purifies or tones the human system, or intensifies feeling or emotions.

(b) That phosphorus nourishes the brain cells, has any effect on the power of thought, or on the growth of the hair.

(c) That calcium has any effect on vitality or endurance, heals wounds, or counteracts acids.

(d) That magnesium has any effect on the nerves, refreshes the human system, or prevents, or, as contained in human food, will relieve constipation.

(e) That potassium is a liver activator, makes tissues elastic or muscles supple, creates grace or beauty or has any influence on one's disposition.

(f) That chlorine cleanses, freshens, purifies, disinfects, or expels waste matter from the human system.

(g) That fluorine strengthens, cements, hardens or builds the resistance of the lungs, tendons or veins.

(h) That sodium in human food aids digestion, counteracts acidosis, halts fermentation, purifies blood or dissolves congestion.

(i) That iodine normalizes glands or cell action, or will eject or counteract poisons.

(j) That silicon has any effect upon the hearing, the eyes, the teeth, the nails, the hair, or any other organ or function of the body, or tones the human system.

(k) That manganese increases resistance, strengthens or coordinates thought or action, or has any effect on the memory.

OPINION OF THE COMMISSION

By SECRET, Commissioner:

Presented for determination here is the appeal filed by the respondent U. S. Industries, Inc. (formerly Pressed Steel Car Company, Inc.) from the initial decision of the hearing examiner which ruled this appellant and respondent Permanent Stainless Steel, Inc. have engaged in unfair and deceptive acts and practices and unfair methods of competition within the intent and meaning of the Federal Trade Commission Act.

Appellant alleges that the primary issues presented by its appeal is whether U. S. Industries, Inc. is responsible for the actions and statements of the other respondent in this proceeding, Permanent Stainless Steel, Inc. (hereinafter referred to as "Permanent") or of the representatives, dealers or agents of Permanent, and whether a cease and

desist order could issue against appellant based upon statements in a brochure, the use of which was discontinued prior to the issuance of complaint. Appellant also takes issue with Paragraphs One through Five of the order attached to the initial decision, alleging that these paragraphs are based solely on oral misrepresentations by respondent Permanent's dealers and representatives, and not on material furnished by it to Permanent. Appellant additionally requests modification of Paragraph Six of this order, though admitting that the claims prescribed therein are based on a brochure printed by it and furnished to Permanent for distribution to its dealers.

The facts are not in dispute. Appellant U. S. Industries, Inc. is engaged in the manufacture and sale of cooking utensils which are purveyed to the public under the brand name Permanent Stainless Steel Cookware. Appellant sells its products throughout the country through fourteen distributors, including respondent Permanent, which is the exclusive enfranchised dealer for these utensils in a four-state area. Appellant sells its cookware to respondent Permanent, which, in turn, promotes sales of its products to ultimate users principally through the course of dinner parties and demonstrations conducted by Permanent's sales representatives. The order in this matter is directed against both appellant and respondent Permanent, but respondent Permanent has not taken an appeal from the examiner's initial decision.

The complaint, under which this proceeding was instituted, has charged that appellant and respondent Permanent, through the latter's agents, representatives or employees, have engaged in misrepresentation of appellant's products, in commerce, in the respects therein alleged, and falsely disparaged competitive cookware, particularly aluminum. Contained in the record is a stipulation between counsel which conclusively establishes that, during the course of the sales talks, false statements have been made by salesmen to the effect that the consumption of food prepared or kept in aluminum utensils will endanger health by causing cancer and other diseases. It similarly appears that during these demonstrations, statements have been made which falsely represent that respondent's wares will be conducive to health by building up a good digestion and preventing gallstones and stomach trouble. The material for these false representations was furnished to its representatives by respondent Permanent.

The initial decision found that the statements contained in certain folders presented by appellant over its own name and sold by it to respondent Permanent and other distributors for use in promoting sales at dinner parties and other demonstrations, have served to create

X the impression among prospective purchasers that the salesmen conducting the presentations are the representatives of and spokesmen for the appellant. The initial decision holds that having fostered the impression that the salesmen selling its product is its authorized representative and demonstrator therefor, and having thereupon enjoyed a substantial volume of sales through the salesman's efforts, appellant cannot then disclaim responsibility for the false representations by means of which such sales were made.

In interposing objections to the decision's ruling that the manufacturer must be deemed to share responsibility for the oral misrepresentations of the salesmen, appellant contends that the language of the folders furnished by it has not conveyed the impression that respondent Permanent's dealers were appellant's representatives. We think this contention is wholly without merit. Featuring appellant's stainless steel cookware and over appellant's name, the folders solicit prospective purchasers to "Let us demonstrate in your home how permanent cookware seals in food values and flavors." As set forth in the initial decision, the folder also states:

X * * * we give a brief talk on the benefits of health cooking. * * * We even clear the table and wash the dishes. This is our method of demonstrating and advertising our product, and to further show our appreciation for the privilege of using your home, we present you a beautiful gift—free.

Additionally, by means of its folders depicting a child flanked by representations associating certain functions of the body with specified mineral elements, appellant has represented, among other things, that these elements will normalize gland and cell action, aid digestion, increase resistance, coordinate thought and action, and improve memory, which statements and others appellant has stipulated are false.

The examiner recommended issuance of an order against the false statements contained in appellant's folders, and found that such folders had served to create the impression that the salesmen were the representatives and spokesmen of the appellant. By placing in the hands of respondent Permanent, under its name, the folders referred to, knowing that they would be used by respondent's dealers and representatives in promoting its product, appellant furnished a means by which prospective purchasers could be unfairly influenced and misled. We believe that the examiner was correct in holding that appellant must therefore share with respondent Permanent responsibility for the false claims made.¹

Appellant contends that even admitting responsibility for the state-

¹ *C. Howard Hunt Pen Co. v. F. T. C.*, 197 F. 2d 273; *F. T. C. v. Winsted Hosiery Mills*, 253 U. S. 493.

ments contained in its folders, it should not be held under Paragraphs One through Five of the order, which it contends are based solely on oral misrepresentations by respondent Permanent's salesmen, and not on statements contained in its publications. We think there is little doubt that the role of moving spirit or "principal" in the conduct of oral sales presentations was imputed to appellant by its advertising, and that "apparent authority" for the oral misrepresentations could be and was ascribed to these salesmen because of appellant's advertising. Nor do we deem it material, as urged under the appeal, that an actual agency relationship may not have, in fact, existed between appellant and these salesmen.

In *Standard Distributors v. Federal Trade Commission*, 211 F. 2d 7 (2d C. A. 1954), Judge Learned Hand, in upholding the Commission's order with respect to a corporate officer named in his individual capacity as a party to that proceeding, said, in part:

It is indeed true that this results in holding such an officer responsible for the conduct of those who are not his agents; * * * However, we do not see that it is any severer a responsibility than that of a principal for the conduct of his agent within the scope of an "apparent authority" that he may have done his best to circumscribe. It is true that "apparent authority" has at times been said to result from estoppel; but that is not true,² for the principal is held, even though the third person does not rely in any way upon the authority; as, for example, in the case of a tort. As Professor Wigmore long ago pointed out, the doctrine in such cases is a more or less rationalized vestige of altogether different notions whose provenience goes back to the archaic law of status.³ So far as it any longer satisfies our present demands of justice, it is because, since the principal has selected the agent to act in a venture in which the principal is interested, it is fair, as between him and a third person, to impose upon him the risk that the agent may exceed his instructions—subject, indeed, to limits, vaguely left open, upon his "apparent authority."

Much the same argument seems to us to be permissible, when, as here, no agency exists.

The statements made during the course of the oral sales presentations must be construed in the light of all the attendant circumstances, including the appellant's folders in hand and the purchasers' probable understanding of the status existing between appellant and these salesmen and his reliance thereon. The Commission, induced by statute with the public interest,⁴ is not bound by common law principles of agency in fulfilling its statutory mandate to protect the public from deception. The customary and probable implication from appellant's furnishing respondent Permanent's representatives with brochures

² *Restatement of Agency*, Sec. 159 (c).

³ Responsibility for Tortious Acts, VII Harvard Law Review, pp. 397-405; *Kidd v. Edison Co.*, 239 Fed. Rep. 405; *affd.* 242 Fed. Rep. 923 (C. A. 2).

⁴ 38 Stat. 719; Title 15 U. S. Code, Sec. 45.

containing deceptive-claims, under its name, would seem to be that this agent's authority to represent appellant was without limitation for the kind and type of sales presentation being made. The purchaser could reasonably believe that appellant had consented to the sales misrepresentations, and that the acts were done on its behalf by the salesmen purporting to act for it. We think the appellant, by furnishing these folders to his distributors, provided a very effective shell to be used in hunting customers for appellant's wares. However, he is not absolved by the fact that, to the shell, the salesmen may have added a few buck-shot of their own.

We deem it immaterial, as urged by appellant, that no express statement is contained in the stipulation to the effect that prospective purchasers considered the dealers to be appellant's representatives, or that no statement appears there indicating that these salesmen sought to emphasize, or additionally confirm to purchasers, the relationship with appellant which was attributed in such promotional material. We deem it immaterial, also, that the appellant may have never expressly approved the oral misrepresentations under consideration here, in the course of specific sales transactions. Nor is it controlling, moreover, as additionally urged under the appeal, that appellant may have lacked disciplinary authority over salesmen who misrepresented its cookware.

Reference appears in the initial decision to magazine advertising engaged in by the appellant, one of which solicited prospective salesmen to contact appellant for employment in selling cookware with its distributors. In other advertisements, likewise incorporated into the stipulation by reference, the statement appears, among others, that "Each Permanent Cookware representative is a reliable businessman bonded after careful investigation." Appellant urges that the latter of these two categories of magazine advertisements cannot be considered as proof that the concern has held out the dealers as its representatives. The advertisements further state that the products are sold through independent distributors and their courteous local representatives, and in certain of them the public is solicited to participate in the free dinner parties conducted by "your local Permanent representative." The advertisements in question clearly evidence appellant's active cooperation with dealers in promoting the retail sale of its cookware. It would be improper to conclude that the statements contained in the magazine advertisements could not be deemed to constitute evidence relevant and material to a determination of whether appellant may have held salesmen out as its representatives.

It is contended additionally that such latter magazine advertise-

ments may not be properly considered as proof that appellant has held the salesmen out as its representatives for the reason that they were not published until after this proceeding was instituted. In the situation here presented, it is not necessary however, to pass on this point. We note in this connection that the initial decision did not rely upon these advertisements as controlling to the conclusion in question, but rested its determination, instead upon statements contained in the folders. This is evident when it is considered that the decision below, when referring to these magazine advertisements, found that their dissemination attested a "continued effort" by appellant to create consumer confidence in salesmen promoting its products. The contentions advanced under these aspects of the appeal are accordingly rejected.

It is additionally urged in the appeal brief that this proceeding is now moot with respect to appellant's practices inasmuch as its use of the deceptive folders or brochures was discontinued May, 1952, approximately two months prior to institution of this proceeding. Even assuming, *arguendo*, that appellant does not now contemplate recirculating the deceptive folders, the fact remains that appellant vigorously maintained that its practices were lawful throughout the course of extended hearings in this proceeding, which hearings were terminated only when the stipulation as to the facts was agreed upon for inclusion into the record. We think that issuance of an appropriate order is required to insure against resumption of the challenged practices. The record, moreover, contains no indication that the salesmen, whom appellant has held out as its representatives and currently holds out in its advertising as bonded and reliable sources for its products, have discontinued the false statements which appellant admits were used in sales presentations for its products. The question of mootness is for the Commission to decide,⁵ and there is no assurance in this record that the acts complained of will not be resumed. Rejected, accordingly, are appellant's contentions that this proceeding is moot.

Appellant additionally requests in its brief that the proscriptive language appearing in Paragraph Six of the order attached to the initial decision be modified by appending a proviso expressly permitting its use of statements to the effect that depending upon the solubility of the compound in which they occur in foods, minerals are leached out in boiling water. In opposing this request, counsel supporting the complaint asserts he does not challenge the suggested proviso's scientific accuracy on record basis. He urges in this con-

⁵ *Guarantee Veterinary Co., et al. v. Federal Trade Commission*, 285 Fed. 853.

nection, however, that the present language of Paragraph Six does not proscribe statements in the vein referred to, and we think his interpretation of the paragraph in question is in all respects correct.

We are accordingly denying appellant's appeal in its entirety and are entering our order adopting the hearing examiner's initial decision. The decision is modified insofar as it relates to the name of appellant company, as it appears from the record that on October 29, 1954, the name "Pressed Steel Car Company, Inc." was changed to "U. S. Industries, Inc."

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

This matter came on to be heard by the Commission upon the appeal filed by the respondent Pressed Steel Car Company, Inc., now known as U. S. Industries, Inc., from the initial decision of the hearing examiner.

Having considered the record herein, the Commission, for reasons stated in its accompanying opinion, has determined that the exceptions interposed under the appeal are without merit and should be denied.

The Commission is of the further view that its decision here should take cognizance of certain changes in the appellant's corporate structure and name which have occurred since this proceeding was instituted, and that it should modify the order to cease and desist to the end that such order contain reference to appellant under its present name of U. S. Industries, Inc.

It is ordered, That the appeal of respondent U. S. Industries, Inc., formerly known as Pressed Steel Car Company, Inc., be, and the same hereby is denied.

It is further ordered, That the preamble of the order to cease and desist contained in the initial decision be, and it hereby is, modified by striking the words "Pressed Steel Car Company, Inc., a corporation," and substituting in lieu thereof the words "U. S. Industries, Inc., a corporation, formerly known as Pressed Steel Car Company, Inc."

It is further ordered, That the initial decision, as modified herein be, and it hereby is, adopted as a part of the decision of the Commission.

It is further ordered, That the respondents Permanent Stainless Steel, Inc., and U. S. Industries, Inc., formerly known as Pressed Steel Car Company, Inc., 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 the order to cease and desist.

Complaint

IN THE MATTER OF

LESTER SLAMOWITZ ET AL. TRADING AS LEMAR FURS

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND OF THE FUR PRODUCTS LABELING
ACT

Docket 6233. Complaint, Sept. 16, 1954—Decision, Feb. 18, 1955

Consent order requiring a furrier in New York City to cease misbranding fur products in violation of the Fur Products Labeling Act.

Before *Mr. Loren H. Laughlin*, hearing examiner.

Mr. John J. McNally for the Commission.

Mr. Leonard Feldman, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Lester Slamowitz and Marvin Imberman, as individuals and copartners trading as Lemar Furs, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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. Respondents Lester Slamowitz and Marvin Imberman are individuals and copartners trading as Lemar Furs with their principal office and place of business located at 345 Seventh Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondents have introduced, manufactured for introduction, sold, offered for sale, transported, and distributed in commerce as "commerce" is defined in the Fur Products Labeling Act, fur products, as that term is defined in said Act, and have manufactured for sale, sold, offered for sale, transported, and distributed fur products which have been made in whole or in part of fur, as that term is defined in said Act, which have been shipped and received in commerce.

PAR. 3. Among the fur products referred to above were stoles. Exemplifying respondents' practice of violating the Fur Products Labeling Act and the Rules and Regulations thereunder is their