

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.

IN THE MATTER OF
HERBERT A. ATKINSON DOING BUSINESS AS
SUDBURY LABORATORY

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

Docket 8156. Complaint, Oct. 26, 1960—Decision, Feb. 11, 1961

Consent order requiring a seller in Sudbury, Mass., to cease representing falsely in advertising the qualities of marine paint and metal coating products he sold, as in the order below indicated.

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 Herbert A. Atkinson doing business as Sudbury Laboratory, 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. Herbert A. Atkinson is an individual doing business as Sudbury Laboratory with his office and principal place of business located at Dutton Road, Sudbury, Massachusetts.

PAR. 2. Respondent is now, and for some time has been, engaged in the advertising, offering for sale, sale and distribution among other things, of a marine paint designated as "Sudbury 365 Bright Work Finish" and a coating for metal products known as "Galva-Coat" and the sale thereof to the public and to dealers for resale to the public.

PAR. 3. In the course and conduct of his business, respondent has caused his products, when sold, to be transported from his place of business in the State of Massachusetts to purchasers thereof located in other States of the United States, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent, in the course and conduct of his business, is now, and has been, in substantial competition, in commerce, with corporations, firms and individuals in the sale of products of the same general kind and nature as those sold by respondent.

PAR. 5. In the course and conduct of his aforesaid business, and for the purpose of inducing the sale of his products, respondent has caused advertisements to be placed in various publications having a distribution in the various States of the United States of which the following is typical:

As to Sudbury 365 Bright Work Finish

Sudbury 365 Bright Work Finish * * * not affected by blistering sun, salt water spray, cigarette burns, * * * Can be easily brushed or sprayed on in any climate, zero to 100° * * * Dries dust-free in 15 minutes, and is ready for additional coats in 30 to 40 minutes * * * with or without sanding.

* * * * *

Sudbury 365 Bright Work Finish is a new type of Marine coating and one that has no similarity whatsoever to varnish, lacquer or any other coating now on the market.

* * * * *

Using the newly developed Urethan base.

* * * * *

Three-year in-use tests in European and Tropical waters prove conclusively that this marine finish eclipses any spar varnish now on the market.

As to Sudbury GALVA-COAT

Electro-chemical action binds Galva-Coat to the metal in a rust-preventive finish that is comparable to hot-dip galvanizing. * * * Covers 48 sq. feet per pound * * * protects metals like Hot Dip Galvanizing.

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PAR. 6. Through the use of the aforesaid statements respondent represented, directly or by implication, that Sudbury 365 Bright Work Finish: (1) is not adversely affected by heat, salt water spray or cigarette burns; (2) can be easily brushed or sprayed on in temperatures from zero to 100°; (3) dries dust-free in 15 minutes and is ready for additional coats in 30 or 40 minutes with or without sanding; (4) is type of marine coating that has no similarity whatsoever to any other coating on the market; (5) three-year end-use tests in European and tropical waters proves conclusively that Sudbury 365 Bright Work Finish eclipses any spar varnish on the market.

Through the use of the aforesaid statements, respondent represented, directly or by implication, that Sudbury Galva-Coat: (1) protects metals in the same manner and to the same extent as Hot-Dip galvanizing; and (2) one pound of Galva-Coat will effectively cover approximately 48 square feet of metal.

PAR. 7. Said statements and representations were and are, false, misleading and deceptive. In truth and in fact: (1) Sudbury 365 Bright Work Finish will be adversely affected by sun, salt water spray and cigarette burns; (2) it cannot be easily brushed or sprayed at low temperatures such as zero or high temperature such as 100°; (3) the length of time that will elapse before the product will dry dust free or within which additional coats may be applied depends upon several factors including the temperature, humidity and presence or absence of sunlight. It is, therefore, not possible to fix a minimum time unless such factors are taken into consideration. Under certain conditions said product would not dry dust free in 15 minutes or be ready for additional coats in 30 to 40 minutes. If the product remains on the surface until it hardens or cures, sanding will be necessary before another coat is applied; (4) said product is similar to other coatings on the market; (5) said product was not subjected to three-year end-use tests, in European or tropical waters or at any other place as it has not been on the market for three years; (6) Sudbury Galva-Coat does not protect metals in the same manner or to the same extent as Hot-Dip galvanizing; (7) one pound of Galva-Coat will not effectively cover 48 square feet of metal.

PAR. 8. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said statements and representations were, and are, true and into the purchase of a substantial number and quantity of respondent's said products because of such erroneous and mistaken belief. As a result thereof, trade has been unfairly diverted to respondent from his

competitors and injury has thereby been done to competition in commerce.

PAR. 9. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondent's competitors and constituted, and now constitute, unfair and deceptive acts and practices and unfair methods of competition, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Morton Nesmith for the Commission.
Respondent for himself.

INITIAL DECISION BY HARRY R. HINKES, HEARING EXAMINER

The complaint in this matter charges the respondent with violation of the Federal Trade Commission Act in connection with the offering for sale, sale and distribution of marine paint and metal coating.

An agreement has now been entered into by respondent and counsel supporting the complaint which provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the making of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in this proceeding without further notice to the respondent and when entered shall have the same force and effect as if entered after a full hearing, respondent specifically waiving all the rights it might have to challenge or contest the validity of the order; that the order may be altered, modified, or set aside in the manner provided for other orders; that the complaint may be used in construing the terms of the order; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The hearing examiner having considered the agreement and proposed order and being of the opinion that they provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Herbert J. Atkinson, erroneously named Herbert A. Atkinson in the complaint, is an individual doing business as

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Sudbury Laboratory with his office and principal place of business located at Dutton Road, in the City of Sudbury, State of Massachusetts.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

It is ordered, That respondent Herbert J. Atkinson doing business as Sudbury Laboratory or under any other trade name, his agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of his products designated as "Sudbury 365 Bright Work Finish" and "Sudbury Galva-Coat" or any other product of substantially the same composition or properties whether sold under the same or any other name or similar products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication that:

1. Sudbury Bright Work Finish is not adversely affected by sun, salt water spray or cigarette burns;

2. Said product can be easily brushed or sprayed on at temperatures as low as zero or as high as 100°; or representing that said product can be brushed or sprayed on at any temperature that is not in accordance with the facts;

3. Said product dries dust-free or is ready for additional coats, with or without sanding in any specific period of time unless it is stated that such periods will vary depending upon the temperature, humidity and sunlight;

4. It has no similarity to other coatings on the market;

5. Said product has undergone a three year test which proved that it eclipses any spar varnish now on the market; or has undergone any tests which prove its superiority in any manner, unless such is the fact;

6. Sudbury Galva-Coat protects metals to the same extent or in the same manner as Hot-Dip galvanizing;

7. One pound of Sudbury Galva-Coat effectively covers 48 square feet of metal or effectively covers any other number of square feet that is not in accordance with the facts.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 11th day

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of February, 1961, become the decision of the Commission; and accordingly;

It is ordered, That respondent Herbert J. Atkinson (erroneously designated in the complaint as Herbert A. Atkinson), doing business as Sudbury Laboratory, 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.
