

Complaint

58 F.T.C.

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
THE MENNEN COMPANY

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

Docket 8146. Complaint, Oct. 17, 1960—Decision, May 4, 1961

Consent order requiring a manufacturer of cosmetics and toilet preparations to cease using deceptive pictorial representations in television advertising—supposedly showing its products' superiority over competing brands—to sell its "Mennen Sof' Stroke" aerosol shaving cream.

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 The Mennen Company, a corporation, 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. Respondent The Mennen Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at Morristown, New Jersey.

PAR. 2. Respondent The Mennen Company is now, and for some time last past has been, engaged in the business of manufacturing, selling and distributing various kinds of cosmetics and toilet preparations, including aerosol shaving creams, such as Mennen's Sof' Stroke, and causes such preparations, when sold, to be transported to wholesalers, distributors and retailers in States other than those in which its factories are located, 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. 3. Respondent The Mennen Company is now, and has been at all times mentioned herein, in substantial competition, in commerce, with corporations, firms and individuals in the sale of cos-

metics and toilet preparations, including aerosol shaving creams, such as Mennen Sof' Stroke.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the sale of its Sof' Stroke aerosol shaving cream, respondent, The Mennen Company, has advertised said Mennen's Sof' Stroke aerosol shaving cream, by means of a demonstration and various statements used in connection therewith, in television broadcasts transmitted by television stations located in various States of the United States and in the District of Columbia having sufficient power to carry such broadcasts across State lines.

The demonstration and statements referred to immediately above are as follows:

VIDEO

Skindiver with heavy growth of beard jumps into about six to eight feet of water at Silver Springs, Florida. He first demonstrates how competing aerosol shaving creams will rapidly dissipate in the hand before being applied to the beard. He then discharges Mennen Sof' Stroke into his cupped hand, applies it to his face and commences to shave his now lathered beard.

AUDIO

Mister, do you wet your face before shaving? Then keep it wet . . . really wet . . . and skin divers at Florida's Silver Springs know how . . . they use . . . New Mennen Sof' Stroke World's richest instant shave cream. It drowns your beard all through the shave. Under water, let's make the cream richness test! First, this leading shave cream. Look—that's not cream richness, that's soap suds! But here's new Mennen Sof' Stroke—that's the richness you want! Yes, Sof' Stroke is so rich that it holds up even under water—So rich that it holds the moisture to your face to drown your beard all through the shave!

That's why shaving with Sof' Stroke every morning is like shaving under water. You'll be getting the kind of shave you've always wanted—so clean and smooth . . . And mister, it's the kind of shave a woman really admires. So remember the next time you shave . . . drown your beard all through the shave—Get New Mennen Sof' Stroke: the world's richest instant shave cream

PAR. 5. Through the use of the aforesaid demonstration and the statements used in connection therewith, respondent represents, directly and by implication, that such demonstration is a valid portrayal of the superiority of Mennen's Sof' Stroke aerosol shaving

cream in the presence of moisture over competing brands of aerosol shaving cream.

PAR. 6. The said demonstration and the statements and representations used in connection therewith are false, misleading and deceptive. In truth and in fact, said demonstration is not a valid portrayal of the superiority of Mennen Sof' Stroke aerosol shaving cream in the presence of moisture over competing brands of aerosol shaving cream, because of artifices (the degree in which the hand was cupped by the skin diver and a mixture of shaving cream and tooth paste applied to the diver's face) employed in the demonstration of respondent's product and which were not employed with competing aerosol shaving creams in the demonstration above described.

Further, the use by respondents of said demonstration, and the statements and representations used in connection therewith, constitute false disparagement of competitive aerosol shaving creams.

PAR. 7. The use by the respondents of the aforesaid invalid demonstration and the false, misleading and deceptive statements and representations used in connection therewith has had, and now has, the tendency and capacity to mislead and deceive a substantial portion 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 quantity of respondent's Sof' Stroke aerosol shaving cream because of such erroneous and mistaken belief. As a result thereof, substantial trade has been and is being unfairly diverted to respondent from its competitors and substantial injury has been done and is being done to competition in commerce.

PAR. 8. The aforesaid acts and practices of respondents, 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. Ames W. Williams for the Commission.

Mr. Philip K. Schwartz, of *Davis, Gilbert, Levine & Schwartz*, of New York, N. Y., for respondent.

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 various kinds of cosmetics and toilet preparations including aerosol shaving creams.

An agreement has now been entered into by respondent, its counsel, 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 may 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 The Mennen Company is a corporation existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located in the City of Morristown, State of New Jersey.

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, The Mennen Company, a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of Mennen Sof' Stroke aerosol shaving cream, or any similar product of substantially the same composition, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any pictorial presentation or demonstration purporting to prove or represented as proving that such product is superior

Complaint

58 F.T.C.

to competing products, when such pictorial presentation or demonstration does not, in fact, so prove.

2. Disparaging by untruthful statements or any misleading or deceptive method, any product competitive with Mennen Sof' Stroke by any pictorial presentation, demonstration, or in any other manner.

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 4th day of May 1961, become the decision of the Commission; and, accordingly:

It is ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF

PACTRA CHEMICAL CO., INC., ET AL.

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

Docket 8163. Complaint, Nov. 4, 1960—Decision, May 4, 1961

Consent order requiring Los Angeles distributors to cease representing falsely in advertising that their "TILO" ceramic tile cleaner was safe for cleaning all types of ceramic tile when in fact it would damage all ceramic tile having a metallic finish, as well as some other types, even when used as directed.

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 Pactra Chemical Co., Inc., a corporation, and Alfred L. Davenport, Jr., Adrian Chalfant and Donald Barber, individually and as officers of said corporation, hereinafter referred to as respondents, have 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. Respondent Pactra Chemical Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and

place of business located at 1213 North Highland Avenue in the City of Los Angeles, State of California.

Respondents Alfred L. Davenport, Jr., Adrian Chalfant and Donald Barber, are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of a ceramic tile cleaner under the trade name "TILO" to retailers for resale to the public. Said product consists of 18% phosphoric acid, 12% isopropyl alcohol, a wetting agent, perfume and water.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said product, when sold, to be shipped from their place of business in the State of California to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said product in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the sale of their said product, respondents have made certain statements concerning their product in leaflets distributed among retailers of said product.

Among and typical of said statements is the following:

SAFE: EFFORTLESS IN ITS ACTION:

Tilo is the result of years of research for a safe ceramic material cleaner.

The directions for use of said product are as follows:

Apply TILO to a small area of surface to be cleaned. Agitate with a stiff brush for approximately 30 seconds. Then immediately flush entire surface thoroughly with fresh water, while using a circular motion with the brush. Wipe Dry. To remove soot and smoke stains from unglazed tile, brick or flagstone fireplaces, barbecues, and swimming pools, follow above procedure. Extreme cases of stain (oil, grease, etc.) may require a second application. In cleaning a vertical surface, pour TILO in a dish and continue as described above. After cleaning with TILO use TILO WAX to protect tile and keep mortar white.

IMPORTANT

In cleaning around enamel tubs and sinks care should be exercised to prevent TILO from coming in contact with enamel finish. Should any TILO solution accidentally drip on any other surface, thoroughly rinse with water immediately or possible damage may result.

PACTRA CHEMICAL CO., Los Angeles, Calif.

PAR. 5. Through the use of the aforesaid statements respondents represent that their said product, used as directed for cleaning ceramic tile, is safe and will not damage any type of said tile.

PAR. 6. Said statements and representations are false, misleading and deceptive. In truth and in fact, said product is not safe, used as directed, for cleaning ceramic tile having a metallic finish as it will damage the finish of said tile. Said product is not safe, used as directed, in cleaning all other types of ceramic tile, as it will damage the finish of some of such tile. The most practical method by which the public can ascertain the safety of said products as to a particular tile, is to test a small section of tile, using the product as directed. The safety of said product as to some tile may depend upon the length of time that it is allowed to remain on the tile. It is therefore important that the time element set out in the directions for use be observed.

PAR. 7. By reason of the aforesaid practice respondents place in the hands of others means and instrumentalities by and through which they may mislead and deceive the public as to the safety of their said product.

PAR. 8. Respondents in the course and conduct of their business are in substantial competition in commerce, with corporations, firms and individuals in the sale of ceramic tile cleaners.

PAR. 9. The use by respondents of the foregoing false, misleading and deceptive statements has had and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that respondents said product may be safely used to clean all types of ceramic tile and into the purchase of substantial quantities of said product by reason of said erroneous and mistaken belief. As a consequence thereof, substantial trade has been unfairly diverted to respondents from their competitors and substantial injury has thereby been done to competition in commerce.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' 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. DeWitt T. Puckett supporting the complaint.

Newton & Irwin, by *Mr. Richard B. Newton* of Los Angeles, Calif., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER.

The Federal Trade Commission issued its complaint against the above-named respondents on November 4, 1960, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act, by the use of false, deceptive and misleading statements in the advertising, offering for sale, sale and distribution of a ceramic tile cleaner under the trade name "TILO". After being served with said complaint, respondents appeared by counsel and entered into an agreement dated February 13, 1961, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by the respondents, by counsel for said respondents and by counsel supporting the complaint, and approved by the Director, Associate Director, and Assistant Director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondents, pursuant to the aforesaid agreement, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections

Order

58 F.T.C.

3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Pactra Chemical Co., Inc. is a corporation existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1213 North Highland Avenue, in the City of Los Angeles, State of California.

Respondents Alfred L. Davenport, Jr., Adrian Chalfant and Donald Barber are officers of the corporate respondent. They formulate, direct and control the policies and practices of the corporate respondent. Their address is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That the respondents Pactra Chemical Co., Inc., a corporation, and its officers, and Alfred L. Davenport, Jr., Adrian Chalfant, and Donald Barber, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the product "Tilo" or any other product containing substantially the same ingredients, whether sold under the same or any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That said product is safe or may be safely used in cleaning ceramic tile unless ceramic tile having a metallic finish is clearly excluded.

(b) That said product is safe or may be safely used in cleaning ceramic tile, other than that having a metallic finish, unless it is clearly stated that the product is safe only when used according to the directions and the directions provide that the product should be tested on a small section of the tile before cleaning is attempted to ascertain its safety.

2. Failing to set forth in the directions for use that before the product is used for cleaning ceramic tile, it should be used according to directions on a small section of tile to ascertain its safety.

3. Furnishing means and instrumentalities to others by and through which they may mislead the public as to any of the matters and things prohibited in paragraphs 1 and 2 hereof.

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 4th day of May 1961, become the decision of the Commission; and, accordingly: