

It is ordered, That the respondents herein 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.

IN THE MATTER OF
THE L. R. OATEY COMPANY ET AL.

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

Docket C-141. Complaint, May 24, 1962—Decision, May 24, 1962

Consent order requiring Cleveland, Ohio, distributors to cease representing falsely in price lists, circulars, and otherwise, that certain of their wire solders contained new and special metals and additives which made them more effective than competing products, and that their plastic metal mender "Bond-Tite" was non-toxic and would not cause itching; and requiring them to label containers of the "Bond-Tite" cream hardener and putty with conspicuous warning of dangers in their use.

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 L. R. Oatey Company, a corporation, and Robert L. Oatey and Alan R. Oatey, 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, The L. R. Oatey Company, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business located at 4700 West 160th Street, in the city of Cleveland, State of Ohio.

Respondents Robert L. Oatey and Alan R. Oatey 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, among other things, wire solders designated #50 and #40 to manufacturers for their use and to jobbers for resale to plumbers, and a plastic metal mender designated "Bond-Tite" to jobbers and agents for resale to autobody repair shops.

PAR. 3. In the course and conduct of their business, respondents now cause, and for some time last past have caused, their said products, when sold, to be shipped from their place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products 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 wire solders designated #50 and #40, respondents have made certain statements and representations in price lists and circulars, and by other media, of which the following are typical:

SPECIAL SOLDER (Contains Miracle Metals) No. 50 (Better than other 50/50 solders) No. 40 (Better than other 40/60 solders)

Oatey #50 wire solder* Better Than Any Other 50/50 Solder . . . especially formulated with new miracle metals containing silver additives . . . *Also available in #40 Solder.

New #50 wire solder "Better than other 50/50 Solders" * * * especially formulated with new miracle metals containing special additives.

Complaint

60 F.T.C.

A solder product * * * called Oatey No. 50 solder * * * it is formulated with metals containing silver additives, and offers the "same advantages as given by regular 50/50 solder."

PAR. 5. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondents represented directly or by implication:

That their wire solders designated #50 and #40 contain new and special metals and additives and, therefore, are more effective than other 50/50 and 40/60 solders, respectively.

PAR. 6. The aforesaid statements and representations were, and are, false, misleading and deceptive. In truth and in fact:

Their wire solders designated #50 and #40 do not contain new and special metals and additives which make them more effective than 50/50 and 40/60 solders, respectively.

PAR. 7. In the course and conduct of their business, and for the purpose of inducing the sale of their plastic metal mender designated "Bond-Tite", respondents have made certain statements and representations in advertisements in magazines of national circulation, in pamphlets and catalogue sheets and on labels, and by other media, of which the following are typical:

Safe

Harmless

Non-Toxic

NON-TOXIC CREAM HARDENER

Gee, How I used to hate those rough hands * * * if I had to put up with * * * itching skin * * * of those other plastic fillers. * * * Non-toxic.

Things sure have changed 'round here since I've used Bond-Tite Plastic Filler. I've * * * eliminated * * * itching skin.

PAR. 8. By and through the use of the aforesaid statements and representations, and others of similar import but not specifically set forth herein, respondents represented, directly or by implication:

(1) That the cream hardener is non-toxic.

(2) That the plastic metal mender will not cause itching and is non-toxic, safe and harmless.

PAR. 9. The aforesaid statements and representations were, and are, false, misleading and deceptive. In truth and in fact:

(1) The cream hardener is not non-toxic and may cause itching or skin irritation as it contains benzoyl peroxide, which is a primary irritant and sensitizer to the skin.

(2) The cream hardener must be combined with the putty to make the plastic metal mender and when this is done the product resulting therefrom may cause itching or skin irritation and is not non-toxic, safe and harmless under all conditions of use.

PAR. 10. The label on the respondents' cream hardener contains only a cautionary statement as to the flammability of the product. However, the benzoyl peroxide contained in the cream hardener may through prolonged or repeated contact with the skin irritate or sensitize the skin and, therefore, in case of contact should be flushed from the skin. Because it contains benzoyl peroxide, the cream hardener is toxic if taken internally and, therefore, should be kept out of reach of children. The label on the respondents' cream hardener is misleading in that it fails to reveal these material facts with respect to the consequences which may result from the use of said product as directed on the label for the putty and with respect to conditions of storage of the cream hardener. The label on the respondents' putty is misleading in that it fails to reveal the material fact that after it is mixed with the cream hardener the product resulting therefrom may through prolonged or repeated contact with the skin irritate or sensitize the skin and, therefore, in case of contact should be flushed from the skin.

PAR. 11. In the conduct of their business, and at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of solders and plastic metal menders of the same general kind and nature as those sold by the respondents.

PAR. 12. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices and failure to warn the purchasing public on the labels of the products composing the plastic mender designated "Bond-Tite" of the dangers attendant to the use of the products have had, and now have, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true, and that there is no danger in use of the products composing the metal mender designated "Bond-Tite", and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken beliefs.

PAR. 13. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of the respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5(a) (1) of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with

violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, The L. R. Oatey Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 4700 West 160th Street in the city of Cleveland, State of Ohio.

Respondents Robert L. Oatey and Alan R. Oatey are officers of said corporation and their address is the same as that of said corporation.

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

ORDER

It is ordered, That respondent, The L. R. Oatey Company, a corporation, and its officers, and respondents Robert L. Oatey and Alan R. Oatey, individually and as officers of said corporation, and respondents' representatives, agents 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 solders, or a plastic metal mender designated "Bond-Tite", or any other product of similar composition or possessing substantially similar properties, under whatever name sold, do forthwith cease and desist from:

1. Representing, directly or by implication, that any of their solders contain a metal or an additive which is new, special or unique or which makes the solder more effective than other solders.

2. Representing, directly or by implication:

1642

Complaint

(a) That the cream hardener is non-toxic or will not cause itching or skin irritation.

(b) That the plastic metal mender is non-toxic, safe or harmless or will not cause itching or skin irritation.

3. Using a label on the container for the cream hardener which does not set forth in a clear and conspicuous manner the following statements.

"CAUTION: Keep away from heat or flame. Keep out of reach of children. If taken internally, induce vomiting; consult physician. Avoid prolonged or repeated contact with skin. In case of contact, flush skin with water."

4. Using a label on the container for the putty which does not set forth in a clear and conspicuous manner the following statement: "CAUTION: After mixing with cream hardener, avoid prolonged or repeated contact with skin. In case of contact, flush skin with water."

It is further ordered. That the respondents herein 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 this order.
