

Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
THE MARTIN-SENOUR COMPANY

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

Docket C-209. Complaint, Aug. 31, 1962—Decision, Aug. 31, 1962

Consent order requiring a Cleveland distributor of plastic metal menders designated "Blu-Flex" and "Fuse-Tite" to wholesalers, to cease such unfair practices as stating in catalogs "Blu-Flex * * * It's non-toxic" when in fact such product could cause itching or skin irritation; to disclose conspicuously on labels such danger in use and treatment therefor and the fact of the product's flammability; and to make similar disclosures on labels of its "Fuse-Tite" product, as well as the importance of avoiding its vapors.

Complaint

61 F.T.C.

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 Martin-Senour 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 Martin-Senour 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 101 Prospect Avenue, N.W., in the city of Cleveland, State of Ohio.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the advertising, offering for sale, sale and distribution of, among other things, plastic metal menders designated "Blu-Flex" and "Fuse-Tite" to wholesalers for resale to retailers.

PAR. 3. In the course and conduct of its business, respondent now causes, and for some time last past has caused, its said products, when sold, to be shipped from its place of business in the State of Ohio to purchasers thereof located in various 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. In the course and conduct of its business, and for the purpose of inducing the sale of its plastic metal mender designated "Blu-Flex" respondent has made the following statement in catalog sheets, and by other media: "Blu-Flex * * * It's non-toxic".

PAR. 5. By and through the use of the aforesaid descriptive statement, respondent represented, directly or by implication, that the plastic metal mender designated "Blu-Flex" is non-toxic.

PAR. 6. In truth and in fact, the metal mender designated "Blu-Flex" is not non-toxic as the cream hardener, a component of said product, contains cyclohexanone peroxide which is a primary irritant and sensitizer to the skin and when the cream hardener is combined with the putty, the other component of said product, to make said metal mender, the product resulting therefrom is not non-toxic and may cause itching or skin irritation. Therefore, the statement and representation set forth in paragraph 4 was, and is, false, misleading and deceptive.

PAR. 7. The labels on the products composing the respondent's plastic metal menders designated "Blu-Flex" and "Fuse-Tite" are misleading in the following respects:

(a) The cyclohexanone peroxide contained in the cream hardener, which is a component of the plastic metal mender designated "Blu-Flex", may be flammable if coming in contact with heat or flame and 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 cyclohexanone peroxide, the cream hardener is toxic if taken internally and, therefore, should be kept out of reach of children. If said cream hardener containing cyclohexanone peroxide is ingested, vomiting should be induced and a physician consulted. The label on the respondent's 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, which is a component of "Blu-Flex", and with respect to conditions of storage of the cream hardener.

(b) The label on the respondent's putty used in the plastic metal mender designated "Blu-Flex" 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.

(c) The label on the respondent's liquid hardener, which is a component of the plastic metal mender designated "Fuse-Tite", contains only a statement as to storing it in a cool place and cautionary statements as to the product being irritating to the skin, that the product should be flushed from the skin and that it should be kept away from children. Because it contains methyl ethyl ketone peroxide, the liquid hardener is toxic and if taken internally, vomiting should be induced and a physician consulted. The methyl ethyl ketone peroxide in the liquid hardener may be flammable if coming in contact with heat or flame. The vapors from the methyl ethyl ketone peroxide in the liquid hardener may be harmful if inhaled and, therefore, the product should be used in a well ventilated area and the vapors avoided. The label on the respondent's liquid hardener is misleading in that it fails to reveal these material facts with respect to the consequences which may result from the use of the said product as directed on the label for the putty, which is a component of "Fuse-Tite", and with respect to conditions of storage of the liquid hardener.

(d) After the putty used in the plastic metal mender designated "Fuse-Tite" is combined with the liquid hardener, the product result-

ing 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. After the liquid hardener is combined with the putty to make the plastic metal mender designated "Fuse-Tite", the vapors from the methyl ethyl ketone peroxide contained in the liquid hardener may be harmful if inhaled and, therefore, the plastic metal mender should be used in a well ventilated area and the vapors avoided. The label on the respondent's putty used in the plastic metal mender designated "Fuse-Tite" is misleading in that it fails to reveal these material facts with respect to the consequences which may result from the use of the product as directed on its label.

PAR. 8. In the course and conduct of its business, at all times mentioned herein, respondent has been in substantial competition, in commerce, with corporations, firms and individuals in the sale of plastic metal menders of the same general kind and nature as those sold by respondent.

PAR. 9. The use by respondent of the aforesaid false, misleading and deceptive statement, representation, and practice and failure to warn the purchasing public on the labels of the products 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 statement and representation was and is true and that there is no danger in use of the products and into the purchase of substantial quantities of respondent's products by reason of said erroneous and mistaken beliefs.

PAR. 10. The aforesaid acts and practices of respondent, as herein alleged, were, and are, all to the prejudice and injury of the public and of the respondent's 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 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Deceptive Practices proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by

the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondent has violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings and enters the following order:

1. Respondent, The Martin-Senour 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 101 Prospect Avenue N.W., in the city of Cleveland, State of Ohio.

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 Martin-Senour Company, a corporation, and its officers, 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 plastic metal menders designated "Blu-Flex" and "Fuse-Tite", or any other product or products of similar composition or possessing substantially similar properties under whatever name or names sold, do forthwith cease and desist from:

1. Representing, directly or by implication, that the plastic metal mender designated "Blu-Flex", or any other product of similar composition or possessing substantially similar properties, is non-toxic or will not cause itching or skin irritation.

2. 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."

3. Using a label on the container for the putty used in the plastic metal mender designated "Blu-Flex", or any other product

of similar composition or possessing substantially similar properties, which does not set forth in a clear and conspicuous manner the following statements: "CAUTION: After mixing with cream hardener, avoid prolonged or repeated contact with skin. In case of contact, flush skin with water."

4. Using a label on the container for the liquid 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. Use in well ventilated area; avoid vapors."

5. Using a label on the container for the putty used in the plastic metal mender designated "Fuse-Tite", or any other product of similar composition or possessing substantially similar properties, which does not set forth in a clear and conspicuous manner the following statements: "CAUTION: After mixing with liquid hardener, avoid prolonged or repeated contact with skin. In case of contact, flush skin with water. Use in well-ventilated area; avoid vapors."

It is further ordered, That the respondent herein 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 this order.