

Complaint

61 F.T.C.

IN THE MATTER OF

LEIFER-LEVITT, INC., ET AL.

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

Docket C-221. Complaint, Sept. 11, 1962—Decision, Sept. 11, 1962

Consent order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by labeling and invoicing as "natural," fur products which were artificially colored, and failing to show on labels and invoices when they were bleached or dyed; and by furnishing false guaranties with respect to certain of their fur products by representing falsely in writing that they had a continuing guaranty on file with the Commission.

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 Leifer-Levitt, Inc., a corporation, and Abe Leifer and Samuel Levitt, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of such 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. Leifer-Levitt, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Abe Leifer and Samuel Levitt are officers of the said corporate respondent and control, direct and formulate the acts, practices and policies of said corporate respondent.

Respondents are manufacturers of fur products and have their office and principal place of business at 350 Seventh Avenue, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and

received in commerce, as the terms "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were falsely and deceptively labeled or otherwise falsely and deceptively identified to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products, but not limited thereto, were fur products with labels which failed to show that the fur product contained or was composed of bleached, dyed, or otherwise artificially colored fur, when such was the fact.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b) (1) of the Fur Products Labeling Act, and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed to disclose that the fur contained in the fur products was bleached, dyed, or otherwise artificially colored, when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural when in fact such fur was bleached, dyed or otherwise artificially colored, in violation of Section 5(b) (2) of the Fur Products Labeling Act.

PAR. 7. Respondents furnished false guaranties under Section 10(b) of the Fur Products Labeling Act with respect to certain of their fur products by falsely representing in writing that they had a continuing guaranty on file with the Federal Trade Commission when respondents in furnishing such guaranties had reason to believe that the fur products so falsely guaranteed would be sold, transported and distributed in commerce, in violation of Rule 48(c) of the Rules and Regulations promulgated under the Fur Products Labeling Act and Section 10(b) of said Act.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under 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 Fur Products Labeling 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 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, Leifer-Levitt, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 350 Seventh Avenue, in the city of New York, State of New York.

Respondents Abe Leifer and Samuel Levitt 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 respondents Leifer-Levitt, Inc., a corporation, and its officers, and Abe Leifer and Samuel Levitt, 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 introduction or manufacture for introduction, into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are

defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Representing directly or by implication on labels that fur contained in fur products is natural, when such is not the fact.

B. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Falsely or deceptively invoicing fur products by:

A. Representing directly or by implication on invoices that the fur contained in fur products is natural, when such is not the fact.

B. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

3. Furnishing a false guaranty that any fur product is not misbranded, falsely invoiced, or falsely advertised, when respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

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.

IN THE MATTER OF

U.S. CHEMICAL & PLASTICS, INC., ET AL.

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

Docket C-222. Complaint, Sept. 11, 1962—Decision, Sept. 11, 1962

Consent order requiring Canton, Ohio, distributors of plastic metal menders designated "Jet Black", "Jet Bond", "Kwik Magic" and "Black Label" to warehouse distributors and jobbers for resale to autobody repair shops and others, to cease representing falsely that such products were nontoxic and safe under all conditions of use, and to label containers of the products clearly and conspicuously with directions for safe use.

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 U.S. Chemical & Plastics, Inc., a corporation, and Jerome L. Maggiore, Philip Maggiore and Jerome V. Maggiore, 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 U.S. Chemical & Plastics, Inc., 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 4944 Seventeenth Street, S.W., in the city of Canton, State of Ohio.

Respondents Jerome L. Maggiore, Philip Maggiore and Jerome V. Maggiore 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, plastic metal menders designated "Jet Black", "Jet Bond", "Kwik Magic" and "Black Label" to warehouse distributors and jobbers for resale to autobody repair shops and other consumers.

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 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 plastic metal menders designated "Jet Black", "Jet Bond", "Kwik Magic" and "Black Label", respondents have made certain statements and representations in advertising in magazines of national circulation, in form letters, circulars and catalog sheets and on labels, and by other media, of which the following are typical:

Jet Black filler provides *** safety and is used with a non-toxic cream hardener *****. ***** Jet Bond also features non-toxic cream hardener. *** It also is non-toxic, and involves no *** itching.

*** Jet Black **** Used with non-toxic cream hardener. *** will not irritate skin.

JET BOND DELIVERS

***** safety—thanks to ** non-toxic cream hardener. *** Jet Bond cream hardener is non-toxic, *** no itching, no irritated skin.

Kwik-Magic autobody filler with non-toxic cream hardener.

KWIK MAGIC *** NO ITCH.

Safety (Kwik Magic Label)

Safety (Black Label Label)

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:

- (1) That the cream hardener is nontoxic.
- (2) That the metal menders designated "Jet Black", "Jet Bond" and "Kwik Magic" will not cause itching and are nontoxic and safe.
- (3) That the metal mender designated "Black Label" is safe.

PAR. 6. In truth and in fact:

(1) The cream hardener is not nontoxic 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 a putty to make the plastic metal menders designated "Jet Black", "Jet Bond" and "Kwik Magic" and when this is done the products resulting therefrom may cause itching or skin irritation and they are not nontoxic and safe under all conditions of use.

(3) The putty and liquid hardener composing the metal mender designated "Black Label" are not safe and may cause itching or skin irritation as the putty contains cobalt naphthenate and the liquid hardener contains methyl ethyl ketone peroxide, both of which are primary irritants and sensitizers to the skin. The vapors from the methyl ethyl ketone peroxide contained in the liquid hardener may be harmful if inhaled.

Therefore, the statements and representations set forth in paragraph 4 were, and are, false, misleading and deceptive.

PAR. 7. The label on the respondents' cream hardener contains only cautionary statements as to the flammability of the product, as to its being kept out of reach of children and as to steps to be taken if it is ingested. 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. The label on the respondents' cream hard-

ener is misleading in that it fails to reveal this material fact with respect to the consequences which may result from the use of the product as directed on the labels for the putties used in the plastic metal menders designated "Jet Black", "Jet Bond" and "Kwik Magic". Each of the labels on the respondents' putties used in the plastic metal menders designated "Jet Black", "Jet Bond" and "Kwik Magic" is misleading in that it fails to reveal the material fact that after the putty 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. The label on the respondents' liquid hardener contains only cautionary statements as to the flammability of the product, as to its being kept out of reach of children and as to the steps to be taken if ingested. However, the methyl ethyl ketone peroxide contained in the liquid 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. The vapors from the methyl ethyl ketone peroxide contained 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 respondents' 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 said product as directed on the label for the putty used in the plastic metal mender designated "Black Label". The label on the respondents' putty used in the plastic metal mender designated "Black Label" contains only a cautionary statement as to the product being kept out of reach of children. Because it contains cobalt naphthenate, the putty used in the plastic metal mender designated "Black Label" is toxic if taken internally and, therefore, if the putty is ingested vomiting should be induced and a physician consulted. The cobalt naphthenate contained in said putty and the methyl ethyl ketone peroxide contained in the liquid hardener, which is mixed with the putty to make the plastic metal mender, 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. The label on the respondents' putty used in the plastic metal mender designated "Black Label" 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 its label and with respect to the conditions of its storage. The label on the respondents' putty used in the plastic metal mender designated "Black Label" is further misleading in that it fails to reveal the material fact that after it is mixed with the liquid hardener the vapors from the methyl ethyl ke-

tone peroxide contained 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.

PAR. 8. In the course of their business, at all times mentioned herein, respondents have 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 that sold by respondents.

PAR. 9. 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 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 and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken beliefs.

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 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 corporation named above, and the respondents named in the caption hereof 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 the respondents with violation of the Federal Trade Commission Act; 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 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 respondents 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 respondents have 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, U.S. Chemical & Plastics, Inc., 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 4944 Seventeenth Street, S.W. in the city of Canton, State of Ohio.

Respondents, Jerome L. Maggiore, Philip Maggiore and Jerome V. Maggiore are officers of the 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 U.S. Chemical & Plastics, Inc., a corporation, and its officers, and respondents Jerome L. Maggiore, Philip Maggiore and Jerome V. Maggiore, 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 plastic metal menders designated "Jet Black", "Jet Bond", "Kwik Magic" and "Black Label", 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:

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

(b) That any of the plastic metal menders is nontoxic or safe 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 any of the putties used in the plastic metal menders designated "Jet Black", "Jet Bond"

or "Kwik Magic", or any other product or products 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 "Black Label", 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: 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."

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.