

IN THE MATTER OF
H. CLAUSEN & CO., INC., ET AL.

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

Docket C-224. Complaint, Sept. 11, 1962—Decision, Sept. 11, 1962

Consent order requiring distributors in the Village of Fords, N.J., of a plastic metal mender designated "Claw Plast Black Armor" to automotive jobbers, distributors, and warehouses for resale to autobody and truck repair shops, to cease advertising falsely that their said product was nontoxic under all conditions of use, and to set forth clearly and conspicuously on labels on containers warning of dangers and directions for safe use thereof.

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 H. Clausen & Co., Inc., a corporation, and Tyrus W. Peck, individually and as an officer 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 H. Clausen & Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business located at 1055 King George Road, in the Village of Fords, State of New Jersey.

Respondent Tyrus W. Peck is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His 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, a plastic metal mender designated "Claw Plast Black Armor" to automotive jobbers, distributors and warehouses for resale to autobody and truck 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 product, when sold, to be shipped from their place of business in the State of New Jersey 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 plastic metal mender designated "Claw Plast Black Armor" respondents have made certain statements and representations in advertisements in magazines of national circulation, in catalogue sheets, price lists and circulars and on labels, and by other media, of which the following are typical:

Claw Plast Black Armor Plastic Putty
Filler*****NON-TOXIC
non-toxic "CREME-GOLD" hardener
non-toxic, non-injurious (Label on Putty)

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 creme hardener is nontoxic.
- (2) That the plastic metal mender is nontoxic and noninjurious.

PAR. 6. In truth and in fact:

- (1) The creme 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 creme hardener or the liquid 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, may be injurious if the vapors from the liquid hardener are inhaled, and is not nontoxic under all conditions of use.

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

PAR. 7. The label on the respondents' liquid hardener contains only cautionary statements as to the flammability of the product, as to avoiding contact with the skin by the product and as to the product being kept out of reach of children. Because it contains methyl ethyl ketone peroxide, the liquid hardener is toxic if taken internally and, therefore, if the liquid hardener is ingested vomiting should be induced and a physician consulted. 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 and with respect to conditions of

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storage of the liquid hardener. The benzoyl peroxide contained in the creme 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 creme hardener is toxic if taken internally and, therefore, should be kept out of reach of children. If the creme hardener is ingested, vomiting should be induced and a physician consulted. Because it contains benzoyl peroxide, the creme hardener may be flammable if coming in contact with heat or flame. The label on the respondents' creme 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 on the putty and with respect to conditions of storage of the creme 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 liquid hardener or the creme 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' putty 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 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.

PAR. 8. In the conduct 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 product of the dangers attendant to the use of the product 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 product and into the purchase of substantial quantities of respondents' product 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 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 of the Federal Trade Commission Act.

Decision and Order

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 H. Clausen & Co., Inc., 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 1055 King George Road in the Village of Fords, State of New Jersey.

Respondent Tyrus W. Peck is an officer of said corporation and his 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 H. Clausen & Co., Inc., a corporation, and its officers, and respondent Tyrus W. Peck, individually and as an officer 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 a plastic metal mender designated "Claw Plast Black Armor", or any other product of similar composition or possessing substantially simi-

lar properties, under whatever name sold, do forthwith cease and desist from:

1. Representing, directly or by implication, that the creme hardner or the metal mender is nontoxic, noninjurious or will not cause itching or skin irritation.

2. 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.”

3. Using a label on the container for the creme 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 statements:

“CAUTION: After mixing with liquid hardener or creme hardener, avoid prolonged or repeated contact with skin. In case of contact, flush skin with water. After mixing with liquid hardener, 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.
