

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

TAYLOR & ART, INC., ET AL.

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

Docket C-240. Complaint, Sept. 20, 1962—Decision, Sept. 20, 1962

Consent order requiring Oakland, Calif., distributors of a plastic metal mender designated "Flex Bond" to automotive paint jobbers and others for resale, to cease labeling their said product as a "plastic solder", and to set forth clearly and conspicuously on labels possible dangers in use thereof and directions for safe handling.

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 Taylor & Art, Inc., a corporation, and Arthur L. Whitehead, Gilbert G. Taylor, and Peter K. Arpin, 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 Taylor & Art, 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 1710 East Twelfth Street, in the city of Oakland, State of California.

Respondents Arthur L. Whitehead, Gilbert G. Taylor, and Peter K. Arpin 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 "Flex Bond"

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and "Flex Bond C" to automotive paint jobbers and other distributors for resale to the consumer.

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 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 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 mender designated "Flex Bond", respondents on labels have described said product as a "plastic solder".

PAR. 5. By and through the use of the aforesaid descriptive statement, respondents represented, directly or by implication, that the metal mender designated "Flex Bond" is a solder.

PAR. 6. In truth and in fact, the metal mender designated "Flex Bond" does not have the characteristics and effectiveness of a solder. Its effectiveness depends principally on its organic and nonmetallic ingredients. Therefore, the statement and representation set forth in paragraph 4 was, and is, 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 keeping the product out of reach of children and as to the steps to be taken if the product is ingested or gets into the eyes. 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 hardener is misleading in that it fails to reveal this material fact 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 "Flex Bond C". The label on the respondents' putty used in the plastic metal mender designated "Flex Bond C" 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. The label on the respondents' liquid hardener contains only cautionary statements as to the flammability of the product and as to flushing the skin with water in the event the product comes in contact with the skin. Because it contains methyl ethyl ketone peroxide and cyclohexanone peroxide, the liquid

hardener is toxic if taken internally and, therefore, should be kept out of reach of children. If the liquid hardener is ingested, vomiting should be induced and a physician consulted. The vapors from the methyl ethyl ketone peroxide and the cyclohexanone 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 putty used in the plastic metal mender designated "Flex Bond" and with respect to conditions of storage of the liquid hardener. The cobalt naphthenate contained in the putty used in the metal mender designated "Flex Bond" 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 cobalt naphthenate, the putty used in the metal mender designated "Flex Bond" is toxic if taken internally and, therefore, should be kept out of reach of children. If said putty containing cobalt naphthenate is ingested, vomiting should be induced and a physician consulted. After the putty used in the plastic metal mender designated "Flex Bond" is combined with the liquid hardener, the vapors from the methyl ethyl ketone peroxide and the cyclohexanone 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 respondents' putty used in the plastic mender designated "Flex Bond" 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 and with respect to conditions of storage of the product.

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 those sold by respondents.

PAR. 9. The use by respondents 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 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 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

The Federal Trade Commission having initiated an investigation of certain acts and practices of the corporation named above, and the respondent 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, Taylor & Art, Inc., is a corporation organized, 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 1710 East Twelfth Street in the city of Oakland, State of California.

Respondents Arthur L. Whitehead, Gilbert G. Taylor and Peter K. Arpin 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 Taylor & Art, Inc., a corporation, and its officers, and respondents Arthur L. Whitehead, Gilbert G. Taylor and Peter K. Arpin, 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 "Flex Bond" and "Flex Bond C", 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. Using the word "solder" to designate, describe or refer to any product which is not a metallic compound or otherwise misrepresenting the composition of the product.

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 "Flex Bond C", 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 "Flex Bond", or any other product of similar composition or possessing substantially similar properties,

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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. 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