

Complaint

IN THE MATTER OF

THE KRISTEE PRODUCTS COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-610. Complaint, Oct. 22, 1963—Decision, Oct. 22, 1963*

Consent order requiring Akron, Ohio, distributors of household and automotive merchandise to cease making a variety of misrepresentations by brand names and advertising, including false claims that their nonmetallic so-called "PLASTIC ALUMINUM" products were composed principally of aluminum; and false representations in catalogs, display outfits and circulars that aforesaid products were a plastic metal and formed a hardened metal when used; that "MIRACLE WALL CLEANER" cleaned wallpaper, painted walls, etc. "LIKE MAGIC * * * Instantly * * *"; and that their "NEW BATTERY LIFE" eliminated recharging or buying new batteries and was "Absolutely guaranteed."

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 Kristee Products Company, a corporation, and William C. Krisher, Oliver W. Lutes, Harold L. Zimmerman and Rose O. Muck, 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 Kristee Products 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 44 North Summit Street in the city of Akron, State of Ohio.

Respondents William C. Krisher, Oliver W. Lutes, Harold L. Zimmerman and Rose O. Muck are officers of the corporate respondent. They formulate, direct and control the policies, 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 household merchandise and automotive merchandise, including products designated "KRISTEE PLASTIC ALUMINUM" or "DURO PLASTIC

Complaint

63 F.T.C.

ALUMINUM", "MIRACLE WALL CLEANER" and "NEW BATTERY LIFE", to the purchasing public and to distributors and retailers for resale to the public.

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, as aforesaid, and for the purpose of inducing the sale of the aforesaid products, the respondents in brand names and advertising having made certain statements and representations, of which the following are typical but not all inclusive:

1. Respondents designate by brand names or otherwise represent certain of their merchandise as "KRISTEE PLASTIC ALUMINUM" or "DURO PLASTIC ALUMINUM".

2. In catalogs, display cards, display outfits and circulars, respondents represent certain of their merchandise as follows:

(a) KRISTEE PLASTIC ALUMINUM or DURO PLASTIC ALUMINUM

*** METAL IN PUTTY FORM!

HARDENS INTO METAL

(b) MIRACLE WALL CLEANER

*** cleans Wall Paper, Painted Walls, Ceilings, Window Shades LIKE MAGIC
*** Instantly grips accumulated *** grit, grime and soot and "erases" them right off the walls, leaving a clean, dirt-free surface.

Chemically treated Sponge Rubber Filler is reversible. Easily washed and used over and over again *** Lasts indefinitely.

(c) NEW BATTERY LIFE

Eliminates expensive, inconvenient, battery charging.

Saves buying new batteries.

Absolutely guaranteed!

PAR. 5. By and through the use of the aforementioned brand names, statements and representations and others of similar import and meaning not specifically set out herein, respondents represented directly or by implication that:

1. "KRISTEE PLASTIC ALUMINUM" or "DURO PLASTIC ALUMINUM" is composed in whole or in principal part of aluminum.

2. (a) "KRISTEE PLASTIC ALUMINUM" or "DURO PLASTIC ALUMINUM" is a plastic metal and when used forms a hardened metal.

(b) "MIRACLE WALL CLEANER" effectively cleans the surface exteriors of a room including the removal of oily or greasy stains or grimy

deposits, instantly removes grit, grime and soot, and retains its usefulness for an indefinite number of applications.

(c) "NEW BATTERY LIFE" obviates recharging or replacing batteries and is unconditionally guaranteed.

PAR. 6. In truth and in fact:

1. "KRISTEE PLASTIC ALUMINUM" or "DURO PLASTIC ALUMINUM" is not composed in whole or in principal part of aluminum but, on the contrary, consists principally of nonmetallic substances with a comparatively small amount of aluminum.

2. (a) "KRISTEE PLASTIC ALUMINUM" or "DURO PLASTIC ALUMINUM" is not a plastic metal but, on the contrary, consists of a powdered metal dispersed in a predominantly nonmetallic medium and when used does not form a hardened metal but, on the contrary, forms a substance that lacks the effectiveness and intrinsic characteristics of hardened metal.

(b) "MIRACLE WALL CLEANER" is ineffective for removing oily or greasy stains or grimy deposits, does not instantly remove grit or soot and its usefulness deteriorates after a limited number of applications.

(c) "NEW BATTERY LIFE" does not remove the necessity of recharging or replacing batteries and respondents' guarantee of the product is subject to limitations and conditions which are not revealed in their advertising of said guarantee.

Therefore, the brand names, statements and representations referred to in Paragraphs 4 and 5 were and are false, misleading and deceptive.

PAR. 7. By the aforesaid practices, respondents place in the hands of others means and instrumentalities by and through which they may mislead the public as to the nature, composition, effectiveness, characteristics and guarantees of their products.

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 products of the same general kind and nature as those hereinabove described and sold by respondents.

PAR. 9. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, 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 into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the

Decision and Order

63 F.T.C.

public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce, in violation of Section 5 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 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 Kristee Products 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 44 North Summit Street, in the city of Akron, State of Ohio.

Respondents William C. Krisher, Oliver W. Lutes, Harold L. Zimmerman and Rose O. Muck, 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 The Kristee Products Company, a corporation, and its officers, and William C. Krisher, Oliver W. Lutes, Harold L. Zimmerman and Rose O. Muck, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution

of "KRISTEE PLASTIC ALUMINUM" or "DURO PLASTIC ALUMINUM", "MIRACLE WALL CLEANER", "NEW BATTERY LIFE" or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "aluminum" or any other word or words denominating metallic substances in brand names to designate, describe or refer to a product that consists principally of non-metallic ingredients; provided, however, that if a product contains a metallic substance in some form, the percentage thereof may be stated.

2. Representing, directly or by implication, that:

- (a) The product designated "KRISTEE PLASTIC ALUMINUM" or "DURO PLASTIC ALUMINUM" or any other product of similar composition or characteristics is a plastic metal or that such product when used forms a hardened metal or a substance that has the effectiveness or intrinsic characteristics of hardened metal;

- (b) The product designated "MIRACLE WALL CLEANER" or any other product of similar composition or characteristics is effective for removing oily or greasy stains or grimy deposits or instantly removes grit, grime or soot, or retains its usefulness for an indefinite number of applications;

- (c) The product designated "NEW BATTERY LIFE" or any other product of similar composition or characteristics obviates recharging or replacing batteries;

- (d) Any of respondents' products are guaranteed unless the nature and extent of the guarantee, the identity of the guarantor, and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed.

3. Misrepresenting, in any manner, the nature, composition, characteristics or effectiveness of any of their products.

4. Furnishing or otherwise placing in the hands of others means and instrumentalities by and through which they may mislead the public as to any of the matters and things hereinabove prohibited.

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.

Order

63 F.T.C.

IN THE MATTER OF
THE PULSE, INC.

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

Docket C-291. Modified order, Oct. 23, 1963

Order reopening proceeding and modifying order of Dec. 28, 1962, 61 F.T.C. 1480—
to conform its prohibitions more closely to those in orders issued against
two of respondent's competitors—by striking paragraphs 2 and 7 therefrom
and substituting more specific requirements.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO CEASE AND
DESIST

Respondent, by motion filed July 5, 1963, having requested that the order to cease and desist, issued to it December 28, 1962, be modified to more closely conform its prohibitions to those in orders issued against two of respondent's competitors; and subsequent thereto pursuant to Commission direction, respondent and members of the Commission's staff entered negotiations with respect to respondent's request which resulted in the submittal of a stipulation signed October 3, 1963, providing, *inter alia*, for certain modifications in the outstanding order to cease and desist; and

The Commission having considered the pleadings and papers filed by the parties and having determined that the public interest requires reopening of this proceeding for the purpose of receiving the said stipulation as a part of the record and for modification of the order to cease and desist in accordance therewith:

It is ordered, That this proceeding be, and it hereby is, reopened and that the stipulation signed October 3, 1963, by representatives of respondent and Commission counsel be, and it hereby is, received as a part of the record herein.

It is further ordered, That the order to cease and desist issued December 28, 1962 [61 F.T.C. 1480], be, and it hereby is, modified by striking paragraphs 2 and 7 therefrom and substituting in their place the following:

2. Using data based upon general listening or viewing preferences as opposed to actual listening or viewing without clearly disclosing in each report that such data may have been based upon general listening or viewing preferences as opposed to actual listening or viewing.

7. Using data based upon hearsay reports, estimates or guesses without clearly disclosing in each report that such data may have been based upon hearsay reports, estimates or guesses.