

Complaint

65 F.T.C.

IN THE MATTER OF

MIRACLE ADHESIVES CORPORATION

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT*Docket 8575. Complaint, June 10, 1963—Decision, Apr. 24, 1964*

Order requiring a manufacturer of adhesives, glues and related products with place of business in Bellmore, Long Island, N.Y., to cease representing falsely—in advertising, in point of sale material, on the tubes in which the product was sold, on the cards to which the tubes were attached, and in advertising matrices provided for dealer use—that its “MIRACLE SHEER-MAGIC” was an “epoxy adhesive” and had the adherent characteristics, strength and capabilities of epoxy adhesives, when in fact said “Sheer-Magic” contained only a small percentage of epoxy resin to serve as a stabilizer and not enough to significantly increase its qualities as claimed.

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 Miracle Adhesives Corporation, 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 Miracle Adhesives Corporation 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 250 Pettit Avenue, in the city of Bellmore, Long Island, State of New York.

PAR. 2. Respondent is now, and for some time last past has been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of adhesives, glues and related products to distributors, jobbers and others for resale to the public.

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 New York to purchasers thereof located in various other States of the United States and in the District of Columbia, 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, respondent sells and distributes an adhesive product which it designates as "MIRACLE SHEER-MAGIC". For the purpose of inducing the sale of said product, respondent has made certain statements and representations, in advertising, in point of sale material, on the tubes in which said product is sold, on the cards to which said tubes are attached, and in advertising matrices provided for retail dealer use, in respect to the composition, character, adhesive capabilities and nature of said product. Typical, but not all inclusive of these representations and statements, are the following:

MIRACLE SHEER-MAGIC

WITH EPOXY RESIN

(The word epoxy is featured in large, domineering and overwhelming letters, approximately three quarters of an inch high; the words "with" and "resin" in small, obscure letters of approximately one sixteenth of an inch high.)

SHEER-MAGIC, a true Jet Age development, will bond just about anything to anything. * * * Made with rugged epoxy and vinyl resins, * * *

SHEER-MAGIC IS NOT AFFECTED BY * * * WATER * * *

SHEER-MAGIC WILL BOND JUST ABOUT EVERYTHING TO ANYTHING—

CHINA—GLASS * * *—PORCELAIN * * *

REPAIR GLASSWARE

SEAL LEAKS IN HOUSEHOLD PLUMBING

MEND BROKEN CHINA AND DISHES

PAR. 5. By and through the use of the aforequoted statements and representations and others of similar import and meaning not specifically set out herein, respondent represents and has represented, directly or by implication, that:

a. "MIRACLE SHEER-MAGIC" is an epoxy adhesive and has the adherent characteristics, strength and capabilities of epoxy adhesives.

b. Epoxy resins present in "MIRACLE SHEER-MAGIC" contribute to and add significant strength and adherent capabilities to said product.

c. Said product with but few exceptions will effectively bond any material to any other material.

d. Said product will effectively repair leaks in plumbing, broken china, and glassware.

e. Said product is not affected by water regardless of the temperature of the water.

PAR. 6. In truth and in fact:

a. "MIRACLE SHEER-MAGIC" is not an epoxy adhesive and does not have the adherent characteristics, strength and capabilities of epoxy adhesives. Epoxy adhesives are derived from an epoxide or oxirane which when applied in use, chemically react with a hardener to form a substantially infusible and insoluble substance that has outstanding adherent capabilities. "MIRACLE SHEER-MAGIC" is a thermoplastic ma-

terial, primarily polyvinylchloride, which can be repeatedly softened and hardened by a change of temperature. Its adherent capabilities are substantially less than those of epoxy type adhesives.

b. Epoxy resins, present in "MIRACLE SHEER-MAGIC" are inert, are not activated during the use of said product, and do not contribute to or add significant strength or adherent capabilities.

c. Said product will not, with few exceptions, effectively bond any material to any other material. There are many materials which said product will not effectively bond.

d. Said product will not effectively repair leaks in plumbing, broken china, and glassware.

e. Said product is affected by water when the temperature of the water reaches approximately 175° Fahrenheit. At such temperatures the adherent capabilities of said product are substantially reduced or eliminated.

Therefore, the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the 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 adhesives and other merchandise of the same general kind and nature as that sold by respondent.

PAR. 8. By the aforesaid practices respondent places in the hands of jobbers, retailers and dealers means and instrumentalities by and through which they may mislead and deceive the public as to the representations, statements and practices stated above.

PAR. 9. The use by respondent 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 respondent's products by reason of said erroneous and mistaken belief.

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 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.

Mr. Samuel J. Rozel supporting the complaint.

Mr. Lewis S. Bowdish of *Remsen, Millham, Bowdish & Spellman*, New York, N.Y. for respondent.

INITIAL DECISION BY ELDON P. SCHRUP, HEARING EXAMINER

JANUARY 9, 1964

STATEMENT OF PROCEEDINGS

The Federal Trade Commission on June 10, 1963 issued its complaint charging Miracle Adhesives Corporation, a corporation, with violation of Section 5 of the Federal Trade Commission Act. The complaint alleges the respondent to be engaged in the manufacture and the interstate sale and distribution of adhesives, glues, and related products to distributors, jobbers and dealers for ultimate resale to the public.

For the purpose of inducing the sale of one of its family of adhesive products designated "Miracle Sheer-Magic", respondent is alleged to have caused to be placed in the hands of its resellers various advertising materials, the content of which is charged to be false, misleading and deceptive to the purchasing public. The advertising representations challenged by the complaint are the various repair strengths and capabilities attributed to the use of "Miracle Sheer-Magic" and, in particular, the representation allegedly made in such connection, directly or by implication, that "Miracle Sheer-Magic" is an epoxy adhesive having the adherent characteristics, strength and capabilities of epoxy adhesives.

The use of said advertising representations by the respondent is alleged to mislead the public into the erroneous and mistaken belief that they are true, and to cause the purchase of substantial quantities of respondent's said product, to the prejudice and injury of both the public and respondent's competitors. Said acts and practices by the respondent are charged by the complaint to constitute unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Respondent filed answer to the complaint on July 15, 1963. Said answer admits in part and denies in part the various allegations of the complaint, asserts various alleged special defenses, and asks that the complaint be dismissed. A prehearing conference,¹ by agreement of respective counsel, was held in Washington, D.C. on August 15, 1963, and the hearing on the merits was held in said city from October 14 through October 17, 1963, and then closed on the record.

The transcript of record consists of 534 pages. Marked for identification and received in evidence are Commission exhibits 1 through 7

¹ The prehearing conference, by agreement of counsel, was made part of the record herein (Tr. 82).

and 9 through 24. Respondent's exhibits marked for identification 7 through 13 and 17 through 22 were also received in evidence. Respondent's exhibits marked for identification 1 through 6 and 14 through 16 were rejected.² Respondent's rejected exhibits are subject to Section 3.14(g) of the Commission's Rules of Practice for Adjudicative Proceedings which provides that rejected exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

No consumer or public witnesses were called to testify in this proceeding. Called to testify in support of the allegations of the complaint³ were Dr. Robert D. Stiehler, Chief of the Polymer Evaluation and Testing Section, National Bureau of Standards, Washington, D.C.; Dr. Vincent F. Maturi, Plastics and Adhesives Specialist, Office of Technology Utilization, National Aeronautics Space Administration, Washington, D.C.; Mr. E. R. Falkenburg, Executive Vice-President and Marketing and Sales Director of the respondent, Miracle Adhesives Corporation.

Called to testify in opposition to the allegations of the complaint⁴ were Mr. E. R. Falkenburg; Mr. Lawrence E. Muttart, Research Associate, Engineering Experiment Station, Ohio State University, Columbus, Ohio; Mr. Ralph F. Johnson, Technical Director of the respondent, Miracle Adhesives Corporation; Mr. Aldo A. Cheli, Staff Engineer, Duo-Assemblers, Inc., Brooklyn, New York, and formerly a staff engineer with the respondent, Miracle Adhesives Corporation.

Respective counsel were afforded full opportunity to be heard, to examine and cross-examine all witnesses, and to introduce such evidence as is provided for under Section 3.14(b) of the Commission's Rules of Practice for Adjudicative Proceedings.

Proposed findings of fact, conclusions, supporting briefs, and replies thereto were filed by respective counsel, and counsel supporting the complaint submitted a proposed order to cease and desist. Proposed findings and conclusions submitted and not adopted in substance or form as herein found and concluded are hereby rejected.

After carefully reviewing the entire record in this proceeding as hereinbefore described, and based on such record and the observation of the witnesses testifying herein, the following Findings of Fact and Conclusions therefrom are made, and the following Order issued:

² CX no. 8 was withdrawn (Tr. 253). RX nos. 1 through 6 were household adhesive products marketed by respondent's competitors not advertised or showing the term or word "epoxy" on their tubes or display cards. (Tr. 281-283.) CX nos. 14 through 16 concerned statistics related only to the suppliers of various raw material components used in various adhesives. (Tr. 447-448.)

³ The qualifications of Dr. Stiehler appear at Tr. 91-93; Dr. Maturi at Tr. 159-164.

⁴ The qualifications of Mr. Muttart appear at Tr. 306-309; Mr. Johnson at Tr. 367-369; Mr. Cheli at Tr. 448-450.

FINDINGS OF FACT

1. Respondent Miracle Adhesives Corporation 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 250 Pettit Avenue, in the city of Bellmore, Long Island, State of New York.⁵

2. Respondent is now, and for some time last past has been, engaged in the manufacturing, advertising, offering for sale, sale and distribution of adhesives, glues and related products to distributors, jobbers and others for resale to the public.⁶

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 manufacturing subsidiary in the State of Ohio to purchasers thereof located in various other States of the United States, 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.⁷

4. Respondent, in the said course and conduct of its business, now manufactures, and for some time last past has manufactured, through its wholly owned subsidiary, The Ohio Adhesives Corporation, New Philadelphia, Ohio, an adhesive product which is designated "Miracle Sheer-Magic". Said product is sold through distributors, jobbers and retail dealers throughout the United States to the general public. Said product is ultimately sold to the public through retail paint, houseware, drug, hardware and grocery stores. Sales of said product were \$28,741.62 in 1962.⁸

5. In the course and conduct of its over-the-counter business, respondent sells and distributes an adhesive product packaged in one tube, which it designates as "Miracle Sheer-Magic" and another adhesive product packaged in two tubes, which it designates as "Miracle Epoxy".⁹ Respondent's product "Miracle Sheer-Magic" is sold to the public for some of the same purposes as respondent's "two-part" epoxy adhesive "Miracle Epoxy".¹⁰ Respondent's "Miracle Sheer-

⁵ Admitted in answer, paragraph one; CSC proposed finding one; Respt. proposed finding one.

⁶ Admitted in answer, paragraph two; CSC proposed finding two; Respt. proposed finding two; Tr. 236-238.

⁷ Admitted in answer, paragraph three; CSC proposed finding three; Respt. proposed finding four; Tr. 236-239; CX no. 7.

⁸ CSC proposed finding four; Respt. proposed findings two and three; Tr. 236-239; CX no. 6.

⁹ Respt. proposed finding five; Tr. 236-248.

¹⁰ The complaint does not challenge this "two-part" product as being other than a true "epoxy adhesive", nor are respondent's repair representations made for this product challenged. RX no. 7, "Miracle Epoxy" is not manufactured by respondent, but is purchased from an outside source and then tubed by the respondent and sold under respondent's product name (Tr. 244).

"Magic" and "Miracle Epoxy" are attached to individual display cards and are frequently displayed in retail stores on peg boards or in other fashion in immediate conjunction with adhesive products produced by competing manufacturers.¹¹ Respondent also markets two other similarly named single-tube adhesives attached to individual display cards, namely, "Miracle Black Magic" and "Miracle Brite Magic". Neither the cards nor the tubes for these products bear the word or the inscription "EPOXY". Another single-tube adhesive product sold by respondent, also attached to an individual display card, is "Miracle Adhesive Vinyl Plastic Repair Kit". This product or its card does not contain the inscription or word "EPOXY". The repair representations made by the respondent for these three latter products are not challenged by the complaint.¹²

6. Examination of the respondent's foregoing adhesive product sold to the public as "Miracle Epoxy" shows it to be packaged in two opaque tubes enclosed in a single transparent casing or blister attached to a paper card. Tube "A" is marked "Resin" and tube "B" is marked "Hardener", with the directions on the card calling for mixing in equal parts by volume before using (*i.e.*, 50% resin and 50% hardener). Its retail price is marked \$1.00. "Miracle Sheer-Magic" is sold and packaged in a similar manner, except that it consists of only a single opaque tube in a transparent casing or blister attached to a paper card. Its retail price is marked \$.59.

The card for "Miracle Epoxy", as well as each of the two attached tubes, bear in conspicuous large lettering the word "EPOXY", and the card makes various repair recommendations.¹³ Similarly, the card and the attached tube of "Miracle Sheer-Magic" each also bear in conspicuous large lettering the word "EPOXY", and the card makes various repair recommendations.¹⁴ Additionally, on the "Miracle Sheer-Magic" card and attached single tube are the words "no-mixing".¹⁵

7. Contained in the record in this proceeding are numerous articles from various magazines of wide circulation providing the basis for

¹¹ CSC proposed finding five; Tr. 236-248.

¹² See RX no. 10 showing the following:

"Miracle Black Magic Adhesive: Glue rigid materials, tile, metal, brick, pottery, concrete."

"Miracle Brite Magic: Glue all rigid materials, some flexible materials, to rigid surfaces."

"Miracle's new Vinyl Plastic Repair Kit: Patch vinyl plastic, swimming pools, other vinyl items."

¹³ RX no. 7 and no. 10: "Miracle's Crystal-Clear Epoxy Adhesive: For metal, glass, china, masonry, wood, porcelain, hard plastics and all rigid surfaces."

¹⁴ CX no. 1, 2, 3, 4; RX no. 9, 10: "Miracle Sheer-Magic Adhesive: Repair china, glassware, bric-a-brac, dishes."

¹⁵ Respondent's Vice-President witness testified he knew of no other one-part adhesive product on the market advertised as containing "epoxy resin" (Tr. 247).

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showing that the public is acquainted generally with the existence of epoxy resin adhesives.¹⁶

For example:

From the March 1961 issue of "Changing Times" an article entitled:

PICK THE RIGHT GLUE

Lots of Brands . . . How to Tell What to Buy

This article, among other matters, states:

Epoxy resin. Developed fairly recently, this is considered the most universal adhesive. It comes closest to the ideal of bonding anything to anything. However, it is more expensive than many other glues, and it may be somewhat tricky to use properly.¹⁷

From the May 1962 issue of "Consumer Reports" an article entitled:

EPOXY ADHESIVES

These unusually versatile glues produce joints of high strength, but they are expensive and have some limitations¹⁸

From the March 23, 1959 issue of "Life" magazine an illustrated article entitled:

A Mighty Glue—Epoxy¹⁹

From the July 1959 issue of "Popular Mechanics" an illustrated article entitled:

THE MIRACLE GLUE THAT WELDS ANYTHING²⁰

From the July 1959 issue of "Popular Science" an illustrated article entitled:

You can bond almost anything to anything with—

THOSE

AMAZING

EPOXY ADHESIVES²¹

¹⁶ [Hearing Examiner Schrup:] "Now your position on the public interest, as I understand it, Mr. Bowdish, is that you claim there is no public interest here, because purchasing members of the public are not injured by buying this?"

"MR. BOWDISH: That is it.

"HEARING EXAMINER SCHRUP: That they are not deceived because they are getting a product that is worth while, is that it?"

"MR. BOWDISH: That is my position, and these publications are not relevant to that issue. They may very well be relevant to the question of what an epoxy adhesive is, or what it may be implied to be, or something of that sort.

"HEARING EXAMINER SCHRUP: You have no objection on the basis of showing that the public is acquainted generally with the existence of epoxy resin adhesives?"

"MR. BOWDISH: I have no objections.

"HEARING EXAMINER SCHRUP: There being no objections, the Exhibits will be received in evidence."

¹⁷ CX no. 9.

¹⁸ CX no. 10.

¹⁹ CX no. 11.

²⁰ CX no. 13.

²¹ CX no. 14.

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From the October 1960 issue of "Popular Science" an article entitled:

The GOO with
a Million Uses
Fix anything? Sure—with epoxy²²

From the June 1960 issue of "Sunset" magazine an article entitled:

Epoxy glue * * * for emergencies²³

8. Respondent, for the purpose of inducing the sale of its "Miracle Sheer-Magic" adhesive, has made certain statements and representations in advertising, in point of sale material, on the tubes in which said product is sold, on the cards to which said tubes are attached, and in advertising matrices provided for retail dealer use, in respect to the composition, character, adhesive capabilities and nature of said product. Typical of these representations and statements are the following:

MIRACLE SHEER-MAGIC

with

EPOXY

RESIN

SHEER-MAGIC, a true Jet Age development will bond just about anything to anything. * * * Made with rugged epoxy and vinyl resins, * * *

SHEER-MAGIC IS NOT AFFECTED BY * * * WATER * * *

SHEER-MAGIC WILL BOND JUST ABOUT EVERYTHING TO ANYTHING-CHINA-GLASS * * *—PORCELAIN * * *

REPAIR GLASSWARE

SEAL LEAKS IN HOUSEHOLD PLUMBING

MEND BROKEN CHINA AND DISHES²⁴

9. Respondent, through the means and methods hereinbefore set forth in preceding finding number 8, has represented, directly and by implication, that "Miracle Sheer-Magic" adhesive is an "epoxy adhesive" and has the adherent characteristics, strength and capabilities of epoxy adhesives.²⁵ This is contrary to the truth and the fact. "Miracle Sheer-Magic" is not an epoxy adhesive.

Respondent's answer at Paragraph Five stated that respondent "Affirmatively alleges that 'Sheer-Magic' is in truth an epoxy adhesive". This position has been abandoned. Respondent's since submitted proposed finding number twenty-two, comprising but one single sentence, unequivocally states and admits "Sheer Magic is not an epoxy adhe-

²² CX no. 15.

²³ CX no. 18.

²⁴ Admitted in answer, paragraph four; CSC proposed finding six; Respt. proposed finding six and seven; Tr. 235-248, 274-277; CX 1, 2, 3, 4, 5; RX 9, 10, 11, 12, 13.

²⁵ CSC proposed finding seven.

sive".²⁶ This is supported by the transcript of record at page 485 where, under direct examination by respondent's counsel, Mr. Cheli, the respondent's own expert witness, was asked his opinion as to whether "Miracle Sheer-Magic" is an epoxy adhesive, to which Mr. Cheli replied: "No, Miracle Sheer Magic definitely is not an epoxy adhesive."

Further, and while "Miracle Sheer-Magic" sold both under the old packaging and formula, and the subsequent new packaging and formula²⁷ contains a small percentage of epoxy resin, such ingredient does not give the said product, as respondent represents directly and by implication, the adherent characteristics, strength and capabilities of an epoxy adhesive. The record in this proceeding is clear that the presence of said epoxy ingredient in such minor amount is only to serve as a stabilizer in aid or help of the retarding of any degradation of the adhesive bond created by the product. Its presence in such a minor amount is not sufficient to significantly further increase the adherent characteristics, strength and capabilities of the product so as to in any manner qualify it to be properly described as an epoxy adhesive.²⁸

10. Respondent's additional sales representations to the public as hereinbefore set forth in preceding finding number 8, are to be judged in the context in which they are set forth, namely that they are made with reference to an adhesive represented directly and impliedly by respondent to be an epoxy adhesive having the adherent characteristics, strength and capabilities present in such an adhesive.

The record contains a test report²⁹ conducted by the respondent's witness Muttart recording the capabilities of 13 different formulas, including those of "Miracle Sheer-Magic" sold in both the old and subsequent new packaging for said product.³⁰ This, however, shows only the capabilities of respondent's formulas, each against the other, and not in comparison with the capabilities present in formulas herein testified as being necessary to qualify as an epoxy adhesive.³¹ Accord-

²⁶ Respondent's proposed finding and the testimony of its expert witness, Mr. Cheli, apply to "Miracle Sheer-Magic" marketed by the respondent under both the old packaging and formula (CX no. 1) and the subsequent new packaging and formula (RX no. 9). Both old and new packagings bear the inscription "with EPOXY resin" prominently displayed on the display cards and the attached single tubes being offered for sale to the purchasing public.

²⁷ Respondent's new packaging and cards were introduced in April 1963 (Tr. 241).

²⁸ See footnote 31 to finding number 10 following.

²⁹ RX no. 20—Adhesive Test Report to Miracle Adhesives Corporation from Ohio State University.

³⁰ The 13 formulas varied in their content from a low of 1.25% to a high of 4.0% of epoxy resin. "Miracle Sheer-Magic", as sold under the old packaging and formula contained the first percentage, and the new packaging and formula the latter and greater percentage of epoxy resin.

³¹ Dr. Stiehler and Dr. Maturi testified in this proceeding that an adhesive must contain at least 20% epoxy resin to be an epoxy adhesive (Tr. 97, 206, 223). Respondent's witness, Mr. Cheli testified in essential agreement with the Commission witnesses Stiehler and Maturi, to wit:

"An epoxy adhesive would be a material compounded or mixed in such a way that epoxy resin presents its major component and this major component is the major adhesive material in the mixture." (Tr. 479)

ingly, it throws little or no light on the validity of the respondent's representations in the context in which they are made. Also in the record is a series of test reports³² on "Miracle Sheer-Magic" which include a comparison of the capabilities of respondent's product "Miracle Sheer-Magic" versus the capabilities of various epoxy adhesives. These shed considerable and significant light on the validity of respondent's representations in the context in which made.

These test reports, and particularly CX no. 21, contrast respondent's representations for "Miracle Sheer-Magic" in comparison with the capabilities of epoxy adhesives when "Miracle Sheer-Magic" is used for purposes where epoxy adhesives might otherwise have been used.

Commission exhibit no. 21 shows, in part, the following:

a. "Rugged epoxy" and "epoxy"—An epoxy glue or cement consists of two components which upon mixing react to form an insoluble and infusible product. "Miracle Sheer-Magic Epoxy Glue" is essentially a one component polyvinyl chloride cement which hardens upon loss of solvent but does not become infusible and insoluble. The following comparison of the adhesive strengths of typical epoxy cements, typical polyvinyl chloride (PVC) cements, and "Miracle Sheer-Magic Epoxy" Glue emphasizes the difference in performance between the two classes of adhesives and shows that the latter material resembles the PVC cements:

Adherend	Epoxy cements	PVC cements	Miracle sheer- magic
			Epoxy glue
	lb per sq in.	lb per sq in.	lb per sq in.
Aluminum.....	1230-2175	52-176	7
Steel.....	1380-2165	158-220	41
Glass.....	*1032-1100	8-81	18
Plastic.....	* 326-468	4-240	16
Wood.....	*310-1060	15-84	99

*Failure occurred in adherend rather than adhesive.

These findings show that "Miracle Sheer-Magic Epoxy Glue" is not an "epoxy" glue and does not have the adhesive strength of a "rugged epoxy" glue. Therefore, the claim is not valid.

"* * * will bond just about anything to anything." The product bonded a variety of test materials. However, it will not bond many plastics, such as teflon and polyethylene. Also, as pointed out in answer to claim "a", the bond strengths obtained with this product are much lower than those obtained with commercial and widely available two-component epoxy adhesives. Therefore, this claim is vague and cannot be substantiated.

11. Respondent would contend its "Miracle Sheer-Magic" product "is not in competition with two-tube epoxy adhesives but with water-

³² CX nos. 21, 22 and 23 being National Bureau of Standards Test Reports on the adhesive composition and capabilities of "Miracle Sheer-Magic Epoxy Glue" to Federal Trade Commission under dates of January, March and July, 1963.

clear, one tube easy to use general purpose, versatile household glues usually containing polyvinyl chloride as a major ingredient".³³

This contention is rejected. All of the above adhesives, both epoxy and non-epoxy, are shown by the record to be marketed generally side by side and offered for sale and sold over-the-counter to the purchasing public. Respondent's Executive Vice-President and Marketing and Sales Director testified at Tr. 237-238 as follows:

Q. What type of retail stores handle this product?

A. Quite a cross section—the same as the jobbers I described—hardware stores, houseware stores, paint supply stores—as a matter of fact, grocery stores, too, and right down the line, some drug stores.

Q. Now would the same follow with your two-part epoxy, which has been marked Respondent's Exhibit 7?

A. Yes.

Q. As far as sales and distribution?

A. The same thing.

Again, at Tr. 244-245, the witness further testified with regard to the product which is respondent's exhibit 7:

Q. Now is this product good for repairing glass?

A. Oh, yes.

Q. China?

A. Yes.

Q. Masonry?

A. Yes.

Q. Wood?

A. Yes, anything that it says on there, I would say, is correct.

Q. Repairing leaks in pipes and radiators?

A. Yes.

Q. In general, the same things that your Miracle Sheer Magic is?

A. Yes.

Finally at Tr. 246-247, the witness testified:

Q. Now, Mr. Falkenburg, are you generally familiar with competing brands of adhesive products, which are on the market, which compete with your products?

A. I try to keep abreast of it.

Q. Do you know of any other one-part adhesive product on the market today which contains epoxy resin?

A. I do not know of any, no.

Q. Do you know of any that advertises?

A. None, that advertise. Whether their product contains it or not, I do not know. I don't have any that advertise it, that's right.

The record is therefore clear that respondent's "Miracle Sheer-Magic" is the only non-epoxy adhesive that is marketed competitively against both epoxy and non-epoxy adhesives and represented to the

³³ Resp't. proposed finding eighteen. See respondent's proposed finding five (footnote 9, *supra*) to the contrary of respondent's present contention.

purchasing public as being a one-part or single-tube epoxy adhesive which, as stated on its display card and tube, requires no mixing.³⁴

12. Respondent, in the context of the representation to the purchasing public that "Miracle Sheer-Magic" is an epoxy adhesive, also makes the further representations for said product set forth herein in preceding finding number 8. The record contains a test report³⁵ comparing the adherent capabilities of "Miracle Sheer-Magic" under both its old and new formulas with relation to said representations, but no comparisons are therein shown as between the adherent capabilities of "Miracle Sheer-Magic" and those of an epoxy adhesive such as respondent's "Miracle Epoxy".³⁶

With relation to the test report comparing the adherent capabilities of "Miracle Sheer-Magic" versus those of epoxy adhesives as set forth herein at preceding finding number 10, the witness Dr. Stiehler further testified in part as follows:

Q. In your opinion, based on your testing and your knowledge of the field, do the epoxy resins present in Miracle Sheer Magic, either the original formula or what has been marked on Commission Exhibit 19, contribute any substantial adhesive capability to the product?

A. No.³⁷

Q. As part of your work conducted on this product in your section, was the adhesive strength of this product evaluated?

A. Yes.³⁸

Q. Did you have occasion to evaluate the bind strength of the two-part epoxy?

A. Yes.

Q. Doctor, in comparison to Miracle Sheer Magic, how does it compare with the various two-part epoxy adhesives that you tested?

A. Well, the adhesive strength that we obtained with the epoxy cement on aluminum we obtained values between 1,230 and 2,175 pounds per square inch.

Q. As against 7 pounds per square inch?

A. That is right. On steel we found 1,380 to 2,165 pounds per square inch for epoxy as against 21 pounds for Miracle Sheer Magic. On glass 1,032 to 1,100 pounds per square inch and the break came in the glass. It did not come in the adhesive whereas the Miracle Sheer Magic, we had only 18 pounds per square inch.

³⁴ CX nos. 1, 2, 3, 4, 5 and RX nos. 9, 10, 11, 12. For convenience of the reader, CX no. 3 (the old card and tube) and RX no. 11 (the new card and tube) are reproduced and attached as an appendix to this initial decision. [Pictorial exhibits CX no. 3 and RX no. 11 are omitted in printing.]

³⁵ RX no. 20.

³⁶ RX no. 7. See the following at Tr. 365:

"HEARING EXAMINER SCHRUP: It would be my understanding that no tests were performed with relation to the product which is Respondent's Exhibit No. 7?

A. THE WITNESS: No."

³⁷ Tr. 106.

³⁸ Tr. 108.

In plastic we had values 326 to 428 pounds per square inch. Again, the break came in the plastic rather than the adhesive, as opposed to 16 pounds per square inch Miracle Sheer Magic.

In wood we obtained 3 to 160 per square inch with failure occurring in the wood rather than in the adhesive as compared to 99 pounds per square inch for Miracle Sheer Magic.³⁹

* * * * *

Q. Now, Doctor, are two epoxy adhesive binds subject to any loss of adhesive strength because of heat?

A. There may be slight loss in heat.

Q. What about Miracle Sheer Magic?

A. It lost essentially all of its adhesive strength when the material was heated to slightly above the boiling point of water, about 220 degrees Fahrenheit.

Q. Did you have occasion to subject this product to hot water?

A. Yes.

Q. Would you state what test was conducted on that?

A. The same specimens were emerged in water at 150 degrees Fahrenheit and within 10 minutes time they would not withstand a force of about one pound per square inch.

Q. Would one pound per square inch be a very low force?

A. It would be a very low force.

Q. Based on your testing and evaluation, are you of the opinion that Miracle Sheer Magic Adhesive would be an effective repairing agent for dishware around the house?

A. No, if you would subject it to hot water.

Q. Are you familiar with the temperature of hot water in the average household?

A. Yes, most of them are set between 140 and 160 Fahrenheit.

Q. They would fall within the 150 degrees you mentioned previously?

A. Yes.

Q. What about in a commercial restaurant?

A. The temperatures would generally be higher because the health regulations make them use hotter water.

Q. Based on your testing examination of this, do you feel this product would be effective for the repair of hot water pipe?

A. No.

Q. How about any kitchen utensils that came in contact with heat?

A. No.⁴⁰

With regard as to whether or not the test methods applied in the laboratory could be related to conditions one experiences in the household, Dr. Stiehler testified, in part, as follows:

Q. Which of the two types of materials, of adhesive materials, would require the better preparation before application, the Miracle Sheer Magic material or the so-called two parts that you testified about?

A. Well, in my own experience, I have done and found better results with the epoxies. That is in my own experience at home.

Q. That is at home. How long have you been using the two-part epoxy?

A. Oh, about two years.

³⁹ Tr. 110-111.

⁴⁰ Tr. 112-113.

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Q. Of course, you are an expert in this field, Doctor?

A. But the parts that I have to join together are generally broken parts where it is not possible to prepare a nice smooth surface. You have a rough fracture and you just put it together. In putting them together I have generally found epoxies are easier to use to produce a much better bind.⁴¹

On redirect examination, Dr. Stiehler further testified to the following:

Q. You also made reference to a number of products that were tested at the Bureau of Standards that had epoxy in their composition. Now, did you test concurrently with these tests that you mentioned a product known as Devcon Epoxy Glue?

A. Yes.

Q. Would you describe this Devcon Epoxy Glue as to whether or not it was a two-part adhesive?

A. Yes, it was a two-part adhesive and it was a clear material.

Q. And by a two-part adhesive, what do you mean?

A. One tube contained epoxy resin and the other tube contained a hardener and these were mixed in essentially equal portions to form the epoxy adhesive.⁴²

Q. Now, this Devcon product, would this product be suitable for repairing glassware?

A. Yes.

Q. And crockery?

A. Yes.

Q. And china?

A. Yes.

Q. Bricabrac and figurines?

A. Yes.

Q. In other words, you would say the Devcon two-part product is suitable for making such repairs as you have just mentioned, whereas the product known as Miracle Sheer Magic is not, is that correct?

A. Well, the Miracle Sheer Magic, the bind that would be formed there would not be suitable for use, where the product would be subjected (to) elevated temperatures or to certain solvents.

Q. Is this Devcon product, was it affected by water?

A. No.⁴³

CX no. 22, the March 1963 test report by the National Bureau of Standards, shows the following results with regard to the effect of hot water on the bonding strength of respondent's product "Miracle Sheer-Magic":

	Steel	Glass	Phenolic plastic
Adherent, adhesive strength, psi, at 75° F.---	27	188	17
Adhesion in water at 150° F.-----	(1)	(1)	(1)

¹ Failure of the bond occurred after less than ten minutes immersion.

These results indicate that Miracle-Sheer Magic Epoxy Glue is useless in the repair of hot water pipes as well as chinaware and other kitchen utensils which would normally come in contact with very hot water.

⁴¹ Tr. 137-138.

⁴² Tr. 146; RX no. 7, "Miracle Epoxy", is a similar product.

⁴³ Tr. 147-148.

It is here again to be emphasized that the thrust of the complaint in the instant proceeding is that respondent represents its product "Miracle Sheer-Magic" as an epoxy adhesive and, in such context, recommends its use for the various applications both stated and pictured for the benefit of the purchasing public on the front and back of the display cards on which said product is being offered for sale.⁴⁴ The similarity of these statements and pictured applications for "Miracle Sheer-Magic", when contrasted with many of the statements and pictured applications shown on respondent's display card in the offering for sale of its true epoxy adhesive "Miracle Epoxy", cannot help other than to further the confusion of the buying public in any attempt to distinguish between the two products. In such a situation, the additional appeal of the apparent convenience and the lower price for "Miracle Sheer-Magic" could well be determinative of the purchaser's choice of what appear to be two products of represented like adherent capabilities.

That the adherent capabilities of "Miracle Sheer-Magic" and a true epoxy adhesive are not equivalent, and that the adherent capabilities of "Miracle Sheer-Magic" are substantially inferior to those of a true epoxy adhesive is clearly shown by the record in this proceeding. Respondent's test report on "Miracle Sheer-Magic" as hereinbefore found in preceding finding number 10, does not attempt to show a comparison of the adherent capabilities of said product in comparison with respondent's epoxy adhesive "Miracle Epoxy" or any other true epoxy adhesive, and no evaluation in such connection can therefore be made from said report.⁴⁵

13. Respondent has been and is now in substantial competition, in commerce, with corporations, firms and individuals in the sale of adhesives and other merchandise of the same general kind and nature as that sold by respondent.⁴⁶ Respondent places in the hands of jobbers, retailers and dealers the means and instrumentalities by and through which they may mislead and deceive the public as to the representations, statements and acts and practices herein shown of record.⁴⁷

⁴⁴ CX no. 1 ; RX no. 9.

⁴⁵ Respondent's witness Muttart, who performed RX 20, this test report, testified at Tr. 366 as follows :

"HEARING EXAMINER SCHRUP: What I am trying to understand is, if I am correct, that the test for example, on page 2, 1 through 13, shows variations of different formulas of respondent's products—

"THE WITNESS: Yes.

"HEARING EXAMINER SCHRUP: How can I compare those variations against something else to see whether it is good or bad?

"THE WITNESS: I don't know."

See also, the testimony of respondent's Technical Director, the witness Johnson, at Tr. 401.

⁴⁶ Admitted in answer, paragraph seven ; CSC proposed finding twenty.

⁴⁷ CSC proposed finding twenty-one.

In evaluating the effect of respondent's hereinbefore described acts and practices on both the purchasing public and respondent's competitors, consideration must be given to the two-fold aspect of using the word or term "epoxy" in the way the respondent has chosen to do business.

By using the said word or term in the aforesaid manner, respondent tends to acquire customers who want a true epoxy adhesive for its recommended uses, and think or are led to believe that respondent's single tube "Miracle Sheer-Magic" is, in truth, a pre-mixed epoxy adhesive made for such uses and that the necessity of the purchase of the customary two-tube unmixed package usually offered at a higher price has been eliminated.

Respondent thereby causes unfair diversion of purchasers from true epoxy adhesives offered for sale by competitors, and, further, the obtaining of the sale in such manner of an inferior substitute product for a true epoxy adhesive is clearly an unfair act and practice to the prejudice and injury of the purchasing public.

Secondly, by using the word or term "epoxy" in the manner described, respondent tends to acquire customers who desire an adhesive for the numerous varied uses recommended by the respondent for "Miracle Sheer-Magic", and think or are led to believe that said product is an epoxy adhesive suitable for all such uses with the further accompanying greater adherent capabilities attributed to epoxy adhesives.

Respondent thus causes unfair diversion of purchasers from competitors' adhesives offered for sale for the corresponding recommended uses of "Miracle Sheer-Magic", but not represented as being an epoxy adhesive. This is further an unfair act and practice to the prejudice and injury of the purchasing public, for it misleads the purchaser into buying a product other than the expected superior epoxy adhesive which he or she is led to believe is being purchased. The fact that the product purchased might later be found sufficiently adequate and the greater adherent capabilities of an epoxy adhesive unnecessary, is not a circumstance which would excuse respondent's foregoing false representations for "Miracle Sheer-Magic".

Respondent would contend that the required test to be applied in construing respondent's representations for "Miracle Sheer-Magic" is whether or not what it terms a "reasonably prudent" buyer could thereby be given the false impression or belief that said product is an epoxy adhesive, and, further, whether or not such a buyer would associate the adherent strengths and capabilities claimed for "Miracle Sheer-Magic" as being made for an epoxy adhesive, rather than being

made by respondent for only a one-tube household adhesive not represented as being an epoxy adhesive.⁴⁸

This "reasonably prudent" buyer test is rejected for the law is to the contrary and protects even the most unsophisticated of buyers, which is not to say that a "reasonably prudent" buyer could not or would not be given the foregoing false and erroneous impression or belief alleged in the complaint to be created by respondent's challenged representations. To the contrary, it is herein found that a reasonable reading of respondent's representations for "Miracle Sheer-Magic", as a whole and in their complete context, as hereinbefore set forth and described, convincingly shows that even a "reasonably prudent" buyer could and would be given the impression, belief or understanding that respondent's said product is not only a one-tube, pre-mixed epoxy adhesive selling at a low price, but that the adherent strengths and capabilities claimed for it are to be interpreted and read by the buyer as those associated with the performance of epoxy adhesives.

Illustrative, in part, of this is the testimony of the witness Dr. Maturi with reference to respondent's product "Miracle Sheer-Magic":

Q. Now, Doctor, if you didn't have your technical background and training and experience, and you walked into a hardware store or a drug store, and you saw this package which is Commission's Exhibit 1, with the tube attached, hanging on a rack or so on, would you know the difference between this product and a true epoxy adhesive?

A. Well, if I sent my wife out to buy an epoxy resin in a hardware store, I am sure that she would be fooled by that word "epoxy". She wouldn't go through the mental gymnastics and say, "There is just a tiny bit of epoxy here". She would think this was epoxy resin, as I am thinking of, and as the industry is thinking of, that would have the bonding, so that would fool her. It would fool my wife. It wouldn't fool me, because I am familiar with the art.

Q. And you are saying "epoxy resin"?

A. Epoxy adhesive, I mean.

If I sent her for epoxy adhesive to glue the furniture and came home with that, I would say that she misunderstood.

Now I don't say that that product—it is a good product for the purpose, but if I am thinking of epoxy adhesive, knowing what their strengths are, I wouldn't want her to come back with that.

But if I am thinking of something else, this may be fine for the job. It is a good product, but for the epoxy—what I understand as epoxy—that is not it.⁴⁹

* * * * *

Q. I would like to ask, Dr. Maturi, if your wife saw the so-called two-part epoxy card, and the other one, side by side, and she had the choice, then what do you think she would have done?

I mean, after all, you must discuss your work with her? (Handing.) Would she still be fooled?

⁴⁸ Point II, brief in support of proposed findings and conclusions on behalf of respondent.

⁴⁹ Tr. 223-224.

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A. I would say she—if I didn't train her, or if I didn't talk with her, or if she had a husband other than one technical, to bring out the difference between the two-tube and the one-tube—I would say she would bring either one. She would think these two are equivalent, but actually they are not.

I mean, in terms of strength and of good properties of a bond, this is much superior. (Indicating.)

Q. Which one is that?

A. The two-tube.⁵⁰

* * * * *

Q. Doctor, if you sent your wife to the store to buy epoxy adhesive, and she saw epoxy adhesive with the price tag of one dollar, and the Miracle Sheer Magic labeled "epoxy" with the price tag of fifty-nine cents, which one would she buy?

A. I would guess she would buy the fifty-nine cents—my wife is frugal.⁵¹

The conclusion would appear inescapable that respondent's representations as herein found are but an attempt to enhance and promote the sale of its lower priced "Miracle Sheer-Magic" product under the cloak of the popularity and the desire by the purchasing public for true epoxy adhesives.⁵²

14. The major ingredient in both the old formula and the new formula used in the marketing of "Miracle Sheer-Magic" is polyvinyl chloride, a vinyl resin. Both formulas contain an epoxy resin, Epon 828, manufactured by Shell Chemical Company. The old formula contained by weight 1.25% of the epoxy resin, the new 4% by weight. After application and when "Miracle Sheer-Magic" is dry, the weight proportions of the epoxy resin content are approximately doubled.⁵³

The record in this proceeding is clear that the minor amount of epoxy resin contained in both the old and the new formula for "Miracle Sheer-Magic" contributes no added adhesive value, and its presence in either formula in such amount would not permit "Miracle Sheer-Magic" to be properly described or represented as being an epoxy adhesive.⁵⁴ The strongly emphasized and dominant portrayal of the

⁵⁰ Tr. 225.

⁵¹ Tr. 233.

⁵² See preceding finding number 7 and the descriptive magazine articles therein set forth.

⁵³ Respt. proposed finding number twelve; Tr. 125-126.

⁵⁴ Dr. Stiehler, at Tr. 97, 104 and 106, testified:

"Q. In your opinion, would a two-part epoxy adhesive product with the epoxy resin content of 1.25 percent be of any value?

"A. No.

"Q. What about four per cent?

"A. No."

* * * * *

"Q. Based on your analysis of Miracle Sheer Magic, would you describe this product as an epoxy adhesive?

"A. No."

* * * * *

"Q. In your opinion, based on your testing and your knowledge of the field, do the epoxy resins present in Miracle Sheer Magic, either the original formula or what has been marked on Commission Exhibit 19, contribute any substantial adhesive capability to the product?

"A. No."

term or word "Epoxy" on the display cards and attached tubes of the said product is not for the adhesive value of its epoxy resin content, as respondent's representations to the prospective purchasers would and do indicate,⁵⁵ for, in truth and in fact, its presence is only to act as a stabilizer tending to retard the degradation of the initial adhesive quality of the basic vinyl resin ingredient of the said product.⁵⁶

The term "epoxy", as herein used, denotes the molecular structure of a substance, and the term "epoxy resins" refers to a class of substances which contain the epoxy molecular structure.⁵⁷ Epoxy resins in the uncured state have no significant or substantial adhesive capabilities.⁵⁸ Epoxy adhesives, as sold over-the-counter to the purchasing public, presently consist of two containers or tubes, one tube containing the epoxy resin ingredient, and the other or second tube the hardener or curing agent.⁵⁹ Before application, the contents of both tubes are intermixed shortly prior to use.⁶⁰ When applied in use, the hardener or curing agent causes the epoxy resin to react and form a substantially infusible and insoluble bond between the two substances or parts being joined. The minor amount of epoxy resin in "Miracle Sheer-Magic" does not so react.⁶¹

⁵⁵ Testimony of Dr. Maturi at Tr. 195-196; 206-208; 221-223.

⁵⁶ Respondent's proposed finding number thirteen; testimony of Dr. Maturi at Tr. 183-192 and that of Mr. Cheli at 492-493, 526.

⁵⁷ Tr. 94.

⁵⁸ RX no. 8, product specifications of the epoxy resin contained in "Miracle Sheer-Magic"; testimony of Dr. Maturi at Tr. 182-183:

"Q. Well, Doctor, Maturi, to avoid any ambiguity that may be in this record on an epoxy resin in a two-part epoxy adhesive, before they are mixed, do these epoxy resins have any substantial adhesive capability by themselves, in their uncured state?

"A. No.

"Q. You must have the hardener added to it?

"A. Yes.

"Q. In order to cause the reaction?

"A. You must have the hardener added to it in order to cause the chemical reaction.

"Q. Is this chemical reaction what gives it its inherent capabilities?

"A. Yes, this chemical reaction gives it its unusual bonding strength, low shrinkage, that one skilled in the art would expect in an epoxy resin.

"Q. Is this what gives it its insolubility?

"A. Yes.

"Q. Its infusibility?

"A. Yes.

"Q. Without—

"A. It also gives it its high temperature water resistance.

"Q. Without this reaction, you wouldn't have these various properties we have enumerated?

"A. Right."

⁵⁹ RX no. 7, "Miracle Epoxy"; testimony of Dr. Stiehler at Tr. 96-97; Dr. Maturi at Tr. 176-180; Mr. Cheli at Tr. 468.

⁶⁰ Some epoxy adhesives for special industrial use are sold in pre-mixed quantity. The chemical reaction to be expected from this mixing does not occur and the product is not operative, however, until and following its application at substantially elevated temperatures. Tr. 95-96; 179-180.

⁶¹ Tr. 152-153.

15. The complaint in the instant proceeding alleges in Paragraph Six that, in truth and in fact:

"MIRACLE SHEER-MAGIC" is not an epoxy adhesive and does not have the adherent characteristics, strength and capabilities of epoxy adhesives. Epoxy adhesives are derived from an epoxide or oxirane which when applied in use, chemically react with a hardener to form a substantially infusible and insoluble substance that has outstanding adherent capabilities. "MIRACLE SHEER-MAGIC" is a thermoplastic material, primarily polyvinylchloride, which can be repeatedly softened and hardened by a change of temperature. Its adherent capabilities are substantially less than those of epoxy type adhesives.

The proposed order to cease and desist submitted by counsel supporting the complaint would, among other things, prohibit the respondent from:

2. Using the term "epoxy," directly or indirectly, to refer to any adhesive or similar product, unless it is derived from an epoxide or oxirane and when applied in use, chemically reacts with a hardener to form a substantially infusible and insoluble substance.

3. Representing, directly or by implication, that any adhesive or similar product is an epoxy adhesive, unless it is derived from an epoxide or oxirane and when applied in use, chemically reacts with a hardener to form a substantially infusible and insoluble substance.

Respondent asserts that the examination of the experts and the testimony of the witness Cheli on behalf of the respondent show clearly that the use of epoxies is a fast developing field and proposes that:

The term epoxy adhesive cannot be limited to adhesives derived from an epoxide or oxirane which when applied chemically react with a hardener to form a substantially infusible and insoluble substance that has outstanding adherent characteristics.⁶²

Respondent particularly excepts to the requirement in paragraphs two and three of Commission counsel's proposed order to cease and desist which would restrict use of the term "epoxy" or representing that an adhesive is an "epoxy adhesive" unless it is "derived from an epoxide or oxirane". Respondent urges that the testimony of the witness Cheli shows paracetic acid to be another derivative source and that such a restricted definition is unjustified by the proof, unnecessary to the case, and not in the public interest.⁶³

Respondent's expert witness, at Tr. 479-481, testified as follows:

Q. Mr. Cheli, how would you define an epoxy adhesive?

A. An epoxy adhesive would be a material compounded or mixed in such a way that epoxy resin presents its major component and this major component is the major adhesive material in the mixture.

⁶² Respondent's proposed finding number twenty-three.

⁶³ Page 7 of answering memorandum by respondent, to proposed findings and conclusions of counsel supporting the complaint.

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Q. Did you derive that definition from any particular source?

A. No, I just feel that this is a common sense approach to the definition, when one might be asked the categorical question regarding any material.

Q. Do you have any authorities that you have studied, in forming that opinion as to a definition of an epoxy adhesive?

A. I think, in my contact with authorities of all categories, when we speak of epoxy adhesive, we generally understand it to mean a material whose major component is epoxy, and this is the material whose adhesive properties we are dealing with.

* * * * *

Q. Then would you be able to express an opinion as to whether all epoxy adhesives are derived from an epoxide or oxirane?

A. Definitely I can make a statement that this is definitely not true. These are only one sort of epoxy or epoxide materials which could be used, and are used as adhesives.

Q. Could you give me an example of an epoxy adhesive that is not derived solely from an epoxide or oxirane, in its major component?

A. Well, paracetic acid could be one so used, not to introduce others—we have already mentioned that one.

Q. I think we have already mentioned—

A. Paracetic acid.

Q. But could you bring this a little nearer home with an example of an epoxy adhesive?

A. I don't believe there are any commercial epoxy adhesives of paracetic acid in the tube form, at the present time. This is a rather new material, but I only illustrate that to show that this particular definition you have presented me with is restrictive and there is no reason to believe that that should be the accepted definition for the only epoxy adhesive which could be compounded.

Upon cross-examination, the witness further testified at Tr. 525:

Q. Mr. Cheli, isn't it true that paracetic acid has never been offered for sale to the householder as an adhesive?

A. I couldn't be sure. I intimated previously that I thought it might not have.

Q. But to the best of your knowledge it never has been.

A. That is correct.

In contrast, the Commission's expert witnesses, Dr. Stiehler and Dr. Maturi, testified to the following:

Q. I show you what has been marked as Commission Exhibit No. 20 for identification, which has been taken from the complaint, which is paragraph 6 of the complaint and paragraphs 2 and 3 of the proposed order. And it reads it is derived from epoxy and when applied in use chemically it reacts with a hardener to form substantially an infusible and insoluble substance.

I show you this for your examination. In your opinion, is this an accurate definition of an epoxy adhesive?

A. Yes.

Q. What is an epoxide?

A. An epoxide is this ring with this membered ring containing oxygen and two other atoms.

Q. What is oxirane?

A. It is the equivalent of epoxide.

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Q. Are you aware of any epoxy adhesive presently on the market today or under development that did not fall within that definition?

A. I am not.

Q. Would the Respondent's product, Miracle Sheer Magic Adhesive, which I have shown you previously, would that fall within that definition, sir?

A. No.⁶⁴

Under cross-examination, Dr. Stiehler testified:

Q. Now, you testified that the definition of epoxy adhesives was as stated in the complaint, is that so?

A. That is right.

Q. That epoxy adhesives are derived from epoxide or oxirane which when applied reacts to form a substantial infusible or insoluble substance. Is that the definition of an epoxy adhesive?

A. That is right.

Q. Did you have anything to do with the preparation of this definition?

A. No.

Q. Do you know where it was derived from?

A. I imagine from various texts.

Q. Have you ever seen a text with such a definition? Such a definition in it of epoxy adhesive?

A. No.

Q. Is it not possible that an epoxy adhesive is derived from other than epoxide or oxirane?

A. No.

Q. Is it possible that epoxy adhesive could consist of more than two substances, two ingredients?

A. Yes.

Q. Well, this definition only includes two ingredients, does it not, the catalyst and epoxy resins?

A. There also can be fillers, such as steel.

Q. Can there also be other substances which are more than fillers?

A. What do you mean by that?

Q. Is it possible that epoxy adhesive would contain another ingredient other than a filler and a catalyst and the epoxy resin?

A. It is possible, yes.

Q. Could you give me an example?

A. I do not know of any offhand.⁶⁵

Following are excerpts from the testimony of Dr. Maturi:

Q. Doctor, I show you what has been marked as Commission Exhibit 20 for identification, which purports to be an extract of the definition for epoxy adhesive contained in the complaint, which the Commission has issued, and in the proposed order. I ask you if you consider that definition a correct definition of an epoxy adhesive?

A. I would consider this a correct definition, and I note, as I noted before, the textbook, Golding, previously referred to, as well as the text by Lee on epoxies, as well as the plastic encyclopedia, which usually speaks for the trade—this definition concurs with that.

⁶⁴ Tr. 114-115.

⁶⁵ Tr. 118-119.

The difference here is that—it is not a difference; instead of saying infusible and insoluble, these texts agreeing with me, use the word “thermosetting”, which is the equivalent of infusible and insoluble, and in this definition you substitute equals for equals, the thermosetting.

Q. Doctor, do you know of any epoxy adhesive now on the market or under development, that does not fit in this definition?

A. No, I know of no product on the market that does not fit the definition.

As I mentioned before, there are products being worked on, or no, I want to strike that—there was no product that doesn't fit that definition on the market, or any product in research that doesn't fit that definition, as far as I know.

* * * * *

Q. Now, Doctor, is it possible that in addition, that an epoxy adhesive, being derived from an epoxide or oxirane, and when applied in use, chemically reacts with a hardener to form a substantially infusible and insoluble substance, and does this adhesive product also have additional ingredients, such as a filler?

A. Yes.

Q. Such as a pigment to give it color?

A. Right.

Q. And this definition merely sets forth the requirements, is that right?

A. Yes.

Q. All epoxy adhesives have to be derived from an epoxy of oxirane, and have to, in use, be applied with a hardener to form a substantially infusible substance?

A. Yes.

Q. They could also have additional substances, such as fillers and colors?

A. Yes, and modifiers, et cetera.

Q. As a matter of fact, they usually do have additional substances in there?

A. Yes.⁶⁶

Accordingly, and for the purpose of the order to cease and desist in this particular proceeding, the statement of facts contained in subparagraph (a) of Paragraph Six of the complaint, as hereinbefore set forth, and the definition of an epoxy adhesive stated in CX number 20, must be found to be true and controlling.⁶⁷ This is particularly so in the light of the further testimony of respondent's witness Cheli:

Q. Do you know of any polyvinyl chloride adhesives other than Miracle Sheer Magic that use Epoxy resins as stabilizers?

A. No, sir. The only one that I presently know about is Miracle Sheer Magic.

Q. Are there not as many as twenty and possibly more stabilizers that might be used in polyvinyl chloride adhesives?

A. Oh yes, possibly more.⁶⁸

Respondent's witness Johnson:

Q. Now, Mr. Johnson, do you know of any other polyvinylchloride on the market that uses epoxy resin as a stabilizer?

A. I do not.

⁶⁶ Tr. 192-194.

⁶⁷ Comm. Rules of Practice, Section 3.28(b)(2) provides that an order to cease and desist may be altered, modified or set aside in the event of changed conditions of fact.

⁶⁸ Tr. 526.

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Q. Sir, is the use for which you testified that your employer puts epoxy resin in these polyvinylchloride adhesives, is this patented? Do you have any exclusive right to the use of this product in this way?

A. We have not applied for any patent on the system as yet.

Q. You have had this product or this product has been on the market for over a year now. Is that correct?

A. The present product came out in June of 1963.

Q. No, sir. I am speaking about the use of epoxy resins in this product, Formula One.

A. Formula One? That is right.

Q. It has been on the market over a year.

Now, I call your attention to Respondent's Exhibit 8(b) for identification which purports to be a product specification, of the Shell Chemical Company, for Epon Resin 828. I read on the back here, a statement: "Epon 828 yields products with high physical strength; excellent chemical resistance and good electrical properties by chemical reaction with curing agents, such as Amines, polyanide resins; polysulfide resins; anhydrides; metallic hydroxides".

Is there anything contained in Formulation One which falls into any of those categories, if you know?

THE WITNESS: None of those would cover this.

Q. Then it is your testimony sir that you people have developed a use for this epoxy other than what Shell Chemical Company is aware of?

A. No, we don't claim that.⁶⁹

Further, that again of the witness Cheli:

Q. Do you think you can make a complete comparison between a material such as Sheer Magic, described in Commission's Exhibit No. 1, the—and the epoxy miracle adhesive, Respondent's Exhibit No. 7, in uses and applications around the house?

A. Did you say you want a comparison?

Q. Yes.

A. These two materials are both adhesives. Let's start on that premise first, and understand that adhesives of this character are being sold to people who will use them around the house, since they are normally found in places where a housewife or a hobbyist or a home do-it-yourselfer will be able to purchase them, and I believe from my examination of the cards that they indicate that this is the scope of both.

Now, there was some discussion in previous testimony regarding this, and it was indicated, I believe, that there is a considerable amount of overlapping in these two products. This is not unusual for many products that are on the market are by the same company or by two different companies. There are different categories of materials, but generally there is some reason for both of them being on there that makes it quite important to have both in evidence.⁷⁰

Finally, that again of Dr. Maturi:

Q. Doctor, what would be required to make Miracle Sheer Magic a true epoxy adhesive under your definition?

A. Make the epoxy a major component, make the epoxy resin a major component of the composition, instead of a small, insignificant component.

⁶⁹ Tr. 429-430.

⁷⁰ Tr. 513-514.

Q. And you would have to add a hardener, sir?

A. Yes.

Q. A separate hardener, in addition to the epoxy?

A. Yes.⁷¹

The order to cease and desist to be entered herein is not intended to, and does not, prohibit the respondent from truthfully stating the amount of epoxy resin contained in "Miracle Sheer-Magic", and the actual purpose for which it is therein used. Creating confusion in the mind of the purchasing public by misrepresentation, however, is not to be allowed and should effectively be prevented.

It is noted and found that in the sale of respondent's product "Miracle Epoxy", a two-tube, true epoxy adhesive, each tube bears the prominently shown term or word "EPOXY" and that the display card states "Sticks Just About Everything to Anything".⁷² It does not appear to be mere coincidence that respondent's "Miracle Sheer-Magic" single-tube, non-epoxy adhesive also bears the equally more or less prominent term or word "EPOXY" and the statement "no-mixing", while the display card further states "Will Bond Just About Everything to Anything".⁷³ In truth and in fact, the epoxy resin contained in "Miracle Sheer-Magic" is inert in the sense of adding to its adhesive strength, and it is used for an entirely different purpose, that of a stabilizer of which there are various others existent.⁷⁴ This is not to say respondent should be prohibited from the use of epoxy resin as a stabilizer, but only that its use must not be represented, either directly or impliedly, as being for other than its true purpose.

The record in this proceeding shows that "Miracle Sheer-Magic" and competitive adhesives, including true epoxy adhesives such as respondent's "Miracle Epoxy", are generally sold side by side in the over-the-counter sale to the purchasing public. These adhesives have many overlapping recommended uses, for example, those for "Miracle Sheer-Magic" and those for a true epoxy adhesive, respondent's "Miracle Epoxy".⁷⁵ Respondent's claims for "Miracle Sheer-Magic" must be interpreted and judged as to their validity in the context of the representation directly or impliedly made for "Miracle Sheer-Magic" that it is a true epoxy adhesive and will perform as such. This it is not and will not do. Most succinctly put, and in the words of respondent's wit-

⁷¹ Tr. 196.

⁷² RX no. 7.

⁷³ RX no. 9. It will also be noted that the above representation for (RX no. 7) "Miracle Epoxy", as well as that for (RX no. 9) "Miracle Sheer-Magic", each contain the limiting words "Just About" everything to anything.

⁷⁴ See RX no. 20, the Ohio University test report.

⁷⁵ Compare the statements and illustrations on the front and reverse sides of the display cards for "Miracle Sheer-Magic" (RX no. 9) and for "Miracle Epoxy" (RX no. 7).

ness Johnson at Tr. 440, in speaking of respondent's exhibit number 7 "Miracle Epoxy", a true epoxy adhesive:

THE WITNESS: For real high strength, we cannot equal the epoxy.

16. The use by respondent 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 respondent's product "Miracle Sheer-Magic" by reason of said erroneous and mistaken belief.

CONCLUSIONS

1. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

2. The complaint herein states a cause of action, and this proceeding is in the public interest.

3. The aforesaid acts and practices of respondent, as herein found in the foregoing Findings of Fact, were, and are, all to the prejudice and injury of the public and of 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.

ORDER

It is ordered, That respondent Miracle Adhesives Corporation, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of adhesives, glues or related products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any adhesive, glue or related product is an epoxy adhesive, where its epoxy component is not derived from an epoxide or oxirane which, when applied in use, chemically reacts with a hardener or curing agent to form a substantially infusible and insoluble bond.

2. Representing, directly or by implication, that the adherent characteristics and the degree and extent of the strength and capabilities of any adhesive, glue or related product are those of an epoxy adhesive, where the epoxy component present is in an amount not sufficient to produce the adherent characteristics and the degree and extent of strength and capabilities being represented.

3. Representing, directly or by implication, that the epoxy component in any adhesive, glue or related product is therein present to produce the adherent characteristics, strength and capabilities of an epoxy adhesive where such component is not productive of the foregoing and is present for a different purpose and use.

4. Representing, directly or by implication, that the product designated "Miracle Sheer-Magic" is an epoxy adhesive or that it has the adherent characteristics, strength and capabilities of an epoxy adhesive, or that the said product will:

a. Produce an adhesive bond as effective as that of an epoxy adhesive where an epoxy adhesive is either susceptible of or necessary of being used.

b. Repair plumbing leaks, broken china, dishes or glassware to the degree and extent of the strength and capabilities of an epoxy adhesive.

c. Resist and is not affected by hot water or other high heat temperatures to the degree and extent of the strength and capabilities of an epoxy adhesive.

5. Misrepresenting in any manner, directly or impliedly, pictorially or otherwise, the true adhesive characteristics, effective degree of strength, or the extent of the effective capabilities of any adhesive, glue or related product advertised and sold to the purchasing public for any stated or recommended purpose and use.

6. Placing in the hands of wholesalers, jobbers, retailers, dealers and others, means and instrumentalities by and through which they may deceive and mislead the purchasing public in the respects set out above.

FINAL ORDER

This case has been heard by the Commission on respondent's appeal from the initial decision of the hearing examiner. Upon examination of the record and after full consideration of the issues of fact and law presented, the Commission has concluded that the initial decision is correct in all respects. Accordingly,

It is ordered, That the initial decision of the hearing examiner, including the findings, conclusions, and order, be, and hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent shall, within sixty (60) days after service of the order herein upon it, file with the Commission a report in writing, signed by such respondent, setting forth in detail the manner and form of its compliance with the order to cease and desist.

Complaint

65 F.T.C.

IN THE MATTER OF

MARCHESSA OF ITALY, INC., ET AL.

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

Docket C-736. Complaint, Apr. 24, 1964—Decision, Apr. 24, 1964

Consent order requiring New York City manufacturers of wool products to cease violating the Wool Products Labeling Act by such practices as labeling as "50% mohair, 45% wool, 5% nylon", sweaters which contain substantially different fibers and amounts than so represented; by failing to disclose on sweater labels the percentage of the total fiber weight of wool and other fibers and the manufacturer, and using the word "mohair" in place of the word "wool".

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Marchessa of Italy, Inc., a corporation, and Irving Rosenthal, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of the said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939, 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 Marchessa of Italy, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondent Irving Rosenthal is an officer of the said corporation and cooperates in formulating, directing and controlling the acts, policies and practices of the corporate respondent including the acts and practices hereinafter referred to.

Respondents are manufacturers of wool products with their office and principal place of business located at 519 Eighth Avenue, New York, New York.

PAR. 2. Subsequent to the effective date of the Wool Products Labeling Act of 1939, respondents have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped and offered for sale in commerce as "commerce" is defined in said Act, wool products as "wool product" is defined therein.