

VI. *It is further ordered*, That the respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

W. M. BARR & COMPANY

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

Docket C-2633. Complaint, Feb. 10, 1975 - Decision, Feb. 10, 1975

Consent order requiring a Memphis, Tenn., manufacturer and seller of paint removers and chemical specialties for the paint industry, among other things to cease misrepresenting the safety of its products; using the word "safe" in any advertisements regarding its products; and making any representations which contradict or are inconsistent with warnings on product labels.

Appearances

For the Commission: *Miriam A. Bender.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to 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 W. M. Barr & Company, a corporation, hereinafter sometimes 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 W. M. Barr & Company is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located at 2336 So. Lauderdale, Memphis, Tenn. Its mailing address is P.O. Box 1879, Memphis, Tenn.

PAR. 2. Respondent is now, and for some time last past has been engaged in the manufacture and sale of paint removers and chemical specialties for the paint industry.

PAR. 3. In the course and conduct of its business as aforesaid, respondent now causes, and for some time last past has caused the said products, when sold, to be transported from its place of business in one State of the United States to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent 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 said business, and for the purpose of inducing the purchase of its paint removers, respondent has made, and is now making, numerous statements and representations in advertising printed in various journals and in other promotional materials concerning the safety and efficacy of these products.

PAR. 5. Typical and illustrative of the statements and representations in said advertising and promotional materials disseminated as aforesaid, but not all inclusive thereof, are the following:

Are you selling the SAFER REMOVER? Is it NON-POISONOUS? Is it FIRE-PROOF? HEAVY-BODIED KLEAN-STRIP "IS" SAFER!

[Klean Strip's] non-poisonous formula makes it safer to have in the home * * *. Non-flammable, non-explosive formula is safer for anywhere.

Klean Strip * * * The Safer Remover.

PAR. 6. Through the use of the aforesaid statements, respondent has represented, directly or by implication, that their Klean-Strip Paint Removers are safe, non-toxic or hazard-free products.

PAR. 7. In truth and in fact the aforesaid product is not safe, non-toxic or hazard-free. Labels affixed to these products specifically warn users that the product is harmful if swallowed, may cause skin irritation, and should not be taken internally, that inhalation of its vapors should be avoided, and that the product should be kept out of the reach of children.

Therefore, the statements and representations set forth in Paragraph Five hereof were, and are, misleading and deceptive.

PAR. 8. By advertising Klean-Strip Paint Remover in a manner which substantially varies from and disregards warnings and instructions for use found on the labels of such products, respondent negates the import and detracts from the effectiveness of such warnings and instructions.

Therefore, by disseminating advertising and other promotional material referred to in Paragraph Eight above, respondent has committed unfair or deceptive acts or practices.

PAR. 9. The use of safety claims regarding products which are required to carry precautionary labeling is in itself unfair and has the capacity and tendency to mislead and deceive users of such products into the erroneous and mistaken belief that they are handling safe products.

Therefore, by disseminating advertising and other promotional materials with safety claims for such products, respondent has committed unfair or deceptive acts or practices.

PAR. 10. In the course and conduct of its business as aforesaid and at all times mentioned herein respondent has been in substantial competition, in commerce, with corporations, firms and individuals, in the sale of paint removers and chemical speciality products of the same general kind and nature as that sold by respondents.

PAR. 11. The aforesaid acts and practices of respondent, as herein alleged, were and are all to the prejudice and injury of the public and respondent's competitors, and constitute unfair or deceptive acts or practices and unfair methods of competition 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 respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the bureau proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent W. M. Barr & Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 2336 So. Lauderdale, Memphis, Tenn.

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, W. M. Barr & Company, a corporation, its successors and assigns, and respondent's officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any of its products with precautionary labeling, (sometimes referred to hereinafter as "such products") do forthwith cease and desist from:

I

A. Representing, directly or by implication, orally or in writing, that Klean-Strip Paint Remover, or any other such products, are safe, non-toxic, non-injurious, non-poisonous, non-hazardous.

B. Using the word safe, or any form thereof, in any advertisement, promotional material or other representation regarding such products.

C. Making any representation, directly or by implication, orally or in writing, which contradicts, is inconsistent with or detracts from the effectiveness of any warning, caution or direction for use required to be set forth on the label or labeling of such product.

II

It is further ordered, That respondent forthwith distribute a copy of this order to each of its operating divisions engaged in the manufacture, sale, promotion, advertising or distribution of products subject to this order, and to all present and future employees or respondent engaged in the advertising, promotion, sale or distribution of such products.

III

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

IV

It is further ordered, That respondent corporation shall within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the provisions of this order.

IN THE MATTER OF

MEN'S MARKET SERVICE, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.
5 OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 2(C) OF THE
CLAYTON ACT

Docket C-2634. Complaint, Feb. 11, 1975 - Decision, Feb. 11, 1975

Consent order requiring a New York City manufacturer and seller of men's clothing and its affiliated merchandising service, among other things to cease inducing discriminatory price reductions or advertising allowances from suppliers.

Appearances

For the Commission: *Paul N. Kane.*

For the respondents: *Charles L. Stewart* for *Hart, Schaffner & Marx*, Chicago, Ill. and *Lee N. Abrams, Mayer, Brown & Platt*, Chicago, Ill.

COMPLAINT

The Federal Trade Commission having reason to believe that Men's Market Service, Inc. and Hart Schaffner & Marx, each of which is named in the caption hereof and is hereinafter more particularly described and referred to as a respondent, having violated the provisions of Section 2 of the Clayton Act, as amended (15 U.S.C. §13) and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), as hereinafter more particularly designated and described, 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 respect thereto as follows:

PARAGRAPH 1. Respondent Men's Market Service, Inc., hereinafter MMS, is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and place of business located at Suite 1304, 1290 Avenue of the Americas, N. Y., N. Y. MMS is a wholly-owned subsidiary of Wallach's, Inc., a New York corporation which is a wholly-owned subsidiary of respondent Hart