

# FEDERAL TRADE COMMISSION DECISIONS

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FINDINGS, OPINIONS, AND ORDERS, JULY 1, 1967, TO  
DECEMBER 31, 1967

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IN THE MATTER OF

CORAN BROS. CORPORATION ET AL.

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

*Docket 8697. Complaint, July 20, 1966—Decision, July 11, 1967*

Order requiring a Boston, Mass., distributor of commercial solders to cease misrepresenting the nature, quality or composition of any of its solder products.

## 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 Coran Bros. Corporation, a corporation, and John Coran and Charles Coran, 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 Coran Bros. Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State (Commonwealth) of Massachusetts, with its principal office and place of business located at 509 East 2nd Street in the city of Boston, State of Massachusetts.

Respondents John Coran and Charles Coran are officers of the corporate respondent. They formulate, direct and control the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. Their address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the offering for sale, sale and distribution of commercial solders including wire solders designated "50/50 by volume" and "40/60 by volume." Said solders are sold to wholesalers and retailers for ultimate 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 Massachusetts to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their commercial wire solders, respondents have engaged in the practice of labeling and describing certain of said solders as "50/50 by volume" and "40/60 by volume."

PAR. 5. By and through the use of the aforesaid manner of labeling and describing said wire solders, the respondents represented:

(1) That their wire solder designated "50/50 by volume" is a 50/50 solder which is known in the trade as a solder containing 50% tin and 50% lead by weight.

(2) That their wire solder designated "40/60 by volume" is a 40/60 solder which is known in the trade as a solder containing 40% tin and 60% lead by weight.

PAR. 6. In truth and in fact:

(1) Their wire solder designated "50/50 by volume" is not a 50/50 solder as known in the trade as it contains less than 50% tin and more than 50% lead by weight.

(2) Their wire solder designated "40/60 by volume" is not a 40/60 solder as known in the trade as it contains less than 40% tin and more than 60% lead by weight.

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 their business, and 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 that sold by respondents.

PAR. 8. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had,

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## Initial Decision

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. 9. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of the respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

*Mrs. Rose W. Sloan and Mr. Herbert L. Blume* for the Commission.

*Mr. Jack H. Backman and Mr. Jerrold C. Katz*, Boston, Mass., attorneys for respondents.

INITIAL DECISION BY WALTER R. JOHNSON, HEARING EXAMINER

FEBRUARY 27, 1967

In the complaint, which was filed on July 20, 1966, the respondents are charged with the violation of Section 5 of the Federal Trade Commission Act in connection with the manner in which they described and labeled certain wire solders sold by them in commerce. The complaint reads in part:

PARAGRAPH FOUR: In the course and conduct of their business, and for the purpose of inducing the purchase of their commercial wire solders, respondents have engaged in the practice of labeling and describing certain of said solders as "50/50 by volume" and "40/60 by volume."

PARAGRAPH FIVE: By and through the use of the aforesaid manner of labeling and describing said wire solders, the respondents represented:

(1) That their wire solder designated "50/50 by volume" is a 50/50 solder which is known in the trade as a solder containing 50% tin and 50% lead by weight.

(2) That their wire solder designated "40/60 by volume" is a 40/60 solder which is known in the trade as a solder containing 40% tin and 60% lead by weight.

PARAGRAPH SIX: In truth and in fact:

(1) Their wire solder designated "50/50 by volume" is not a 50/50 solder as known in the trade as it contains less than 50% tin and more than 50% lead by weight.

(2) Their wire solder designated "40/60 by volume" is not a 40/60 solder as known in the trade as it contains less than 40% tin and more than 60% lead by weight.

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

PARAGRAPH SEVEN: In the conduct of their business, and 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 that sold by respondents:

PARAGRAPH EIGHT: 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.

PARAGRAPH NINE: The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of the respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act.

In the answer filed by the respondents, they admit the allegations of Paragraph Four, but deny that the statements and representations are false, misleading and deceptive.

Hearings were held at Boston, Massachusetts, on November 28, 29, and 30, 1966, at which time complaint counsel put in their case and the respondents submitted their defense. Testimony was received from a total of 22 witnesses called by complaint counsel. The defense submitted the testimony of one witness, respondent John Coran, who had testified in connection with the case-in-chief. On January 13, 1967, the parties filed proposed findings, together with briefs in support thereof. Replies thereto were filed by complaint counsel on January 23, 1967, and by respondents on January 25, 1967. The proposed findings and conclusions not hereinafter specifically found or concluded are herewith rejected. The following abbreviations have been used herein: "C." for Commission's Complaint; "A." for Respondents' Answer; "Par." for paragraph; "Tr." for Transcript of Proceedings; and "CX" for Commission's Exhibit. Upon consideration of the entire record herein, the hearing examiner makes the following findings of fact and conclusions:

Respondent Coran Bros. Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office, manufacturing plant and principal place of business located on premises owned by it at 509 East 2nd Street, Boston, Massachusetts (C., Par. One; A., Par. 1; Tr. 21). After its organization in December 1947 or January 1948 to the year 1951, it was engaged in the scrap metal business (Tr. 47-8, 403). The corporation is now, and since 1951

has been, engaged in the manufacture, offering for sale, sale, and distribution of commercial solders that are mostly sold to wholesalers and retailers, located in approximately 30 States of the United States, for ultimate sale to the public (C., Par. Two; A., Par. 2; Tr. 36). Its gross sales in the years 1963, 1964, and 1965 were \$506,000, \$743,000, and \$829,000, respectively; for the first ten months of 1966, its gross sales were \$619,000 (Tr. 296-99). In the conduct of its business, the corporation now causes, and for some time last past has caused, its products, when sold, to be shipped from its place of business in Massachusetts to purchasers thereof located in various other States of the United States, and maintains, and at the 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 (C., Par. Three; A., Par. 3; Tr. 36-7).

The respondent John Coran is president and respondent Charles Coran is treasurer of the corporation (brothers) (Tr. 22, 67). Their address is the same as that of the corporate respondent (Tr. 21). They, together with Ruth Coran, the wife of John Coran, constitute the board of directors (Tr. 66). Since its inception, the corporation has been a family business (Tr. 45). John Coran owns 80% and Anne Coran, the wife of Charles Coran, 20%, of the stock of the corporation (Tr. 45). A third brother, Hyman B. Coran, did own 40% of the stock, but this was acquired by John Coran five or six years ago (Tr. 45). Although the respondents in their answer admit the allegation of the complaint that John Coran and Charles Coran "formulate, direct and control the acts and practices of the corporate respondent" (C., Par. One; A., Par. 1), the evidence establishes that Charles Coran functions only as a salesman for the corporation on a salary basis, and has no part in formulating any of the policies of the corporation (Tr. 66-9). John Coran, from the outset of the corporation, has set the policies of the corporation, and the acts and practices that are challenged in this proceeding are the results of a decision reached by him without consulting the other directors or the other stockholder (Tr. 29-30, 37, 40, 43, 45-6, 49-50, 66-7).

The record establishes that it has been industry practice for many years, and is current industry practice, when solders are labeled by numerical designations such as "50/50" and "40/60" that the first number before the slant mark (/) indicates the percentage of tin by weight and the second number after the slant mark (/) indicates the percentage of lead by weight. Further, the record also establishes that it has not been, nor is it

presently, industry practice to use the words "by weight" in connection with the aforesaid numerical designations, but that the use alone of such numerical designations indicates the percentage of tin and lead by weight.

Mr. Robert A. Putney, assistant manager of the metal division of the National Lead Company, having been employed by that company for 36 years (Tr. 136-37) testified:

Q. And as to product designation on the package or any other advertising description, to your knowledge, if you know, how has the product been sold as to product designation? With respect to tin-lead content?

A. Well, 50 per cent tin, 50 per cent lead wire solder would mean an alloy where per hundred pounds, you would use 50 pounds of lead and 50 pounds of tin.

Q. And would this apply to a 40/60 designation as well?

A. Forty pounds of tin and 60 pounds of lead, right.

Q. Based upon your knowledge of 36 years experience in the industry, has the product been sold on that weight basis?

A. Yes, it has (Tr. 140-41).

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Q. Now, is it our understanding based on your marketing knowledge that prior to two years ago, approximately, all solders are or were described in the trade purely on a by weight basis as to tin-lead ratio?

A. If they were described as 50/50 or 40/60, the practice in the trade has been for those solders to contain 50 per cent tin, 50 per cent lead in the case of 50/50, and 40 per cent tin, 60 per cent lead in the case of 40/60.

Q. That is by weight, not volume?

A. By weight (Tr. 141-42).

Mr. Alan R. Oatey, vice president of L. R. Oatey Company, Cleveland, Ohio, manufacturers of plumbing, automotive and hardware supplies, as well as solders, testified (Tr. 214):

THE WITNESS: Well, it has been historical in the industry to mark the spools by the 50/50 designation or 40/60. That is considered to be weight. That is accepted by the industry, by the manufacturers, and by the people who consume the product.

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THE WITNESS: I do know, and these numbers stand for—the first 50, the first number always stands for tin, and in this case, 50 per cent would be tin. This is important, too, because in the industry, the first number given is always tin. This is how it has been right along.

Respondent John Coran testified (Tr. 410):

Q. Mr. Coran, in connection with your wire roll solder sold in spools, particularly one-pound spools, how do you label the 50/50 solder sold by your company when it is sold by weight?

A. 50 slant 50.

Q. Do the words "by weight" appear?

A. No.

Wire solders labeled and designated "50/50 by volume" and "40/60 by volume" were first placed on the market by the respondent corporation in the year 1963. It pioneered in this type of labeling (Tr. 41-2). Thereafter other manufacturers employed the "by volume" label. John Coran, when asked, "Have other competitors labeled their product by volume?", answered: "I have seen at least one, maybe two. I have heard of several others, but I have never seen their labels" (Tr. 414). The Commission issued a complaint, dated August 2, 1966, against *Thomas F. Lukens Metal Company, et al.*, of Philadelphia, Pennsylvania (Docket No. C-1089), wherein, on the same date, the Commission entered a consent order to cease and desist from the practices challenged as unfair and deceptive [70 F.T.C. 479]. A complaint, dated September 21, 1966, was issued against *Bow Solder Products Co., Inc., et al.*, of Newark, New Jersey (Docket No. 8712), wherein a consent cease and desist order was entered on January 19, 1967 [71 F.T.C. 48]. In each instance, the order recited that it was for settlement purposes only and did not constitute an admission by the respondents that they had violated the law. The charges in both complaints were similar to those in this proceeding. Respondents' counsel brought out on cross-examination of Mr. Putney of National Lead Company that four or five years ago one of the branches of his company had, for a period of about six months, labeled a solder with the number "50," which had only 40% tin by weight. In this connection, Mr. Putney testified (Tr. 155):

Now, when we received the letter from the Federal Trade Commission about four years ago and we reviewed all of the names assigned to the various grades of solder that we make, and when we found this out, we stopped it. Mr. Oatey of L. R. Oatey Company testified on cross-examination that his company did label solders with the numbers "50" and "40," but they contained only 40% and 30% tin by weight, respectively, and the practice was discontinued over four years ago as a result of a letter from the Federal Trade Commission. Mr. Oatey said:

This letter was sent to most all manufacturers pointing out that there was problems in the solder industry and there has been problems for many years and they were being the clearing house for trying to correct this situation. They were asking the manufacturers to discontinue labeling solders by numbers and any other designation that would cause confusion in the type of solder that it was. With this, we discontinued the use of the number 40 and the number 50 (Tr. 232).

When asked, "Are people apt to believe when you label that as a 50 as containing 50 per cent tin?", Mr. Oatey answered: "This is why we discontinued it. Exactly right" (Tr. 231).

