

Complaint

27 F. T. C.

IN THE MATTER OF
SOFT-LITE LENS COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 2717. Complaint, Feb. 10, 1936—Decision, June 23, 1938

Where a corporation engaged in causing to be manufactured, offering, selling, marketing, and distributing optical glass lenses and lens blanks, including single vision and bifocal lenses, uncut lenses and blanks, and edged and prescription lenses made in four densities of tint or color known and designated in the trade as rose or flesh, and sold, marketed, and distributed under the general trade name of "Soft-Lite," used alone to identify said products and used in combination with other trade terms or descriptive words, such as "Panoptik," "Kryptok," "Duo-Rede," "Duo-Site," "Duo-Vis," "Thin Lite," "No Glare," "C V," "Unisite," and others, and in the sale of such "Soft-Lite" products to wholesalers only for resale to retailers and by later to ultimate consumer or user—

Required many retailers to enter into certain written agreements designated as "a registered dispensing license," in response, as a rule, to retailer's application therefor subscribing to the "high professional standards and trade principles upon which the Soft-Lite lenses are made and sold," and under which agreements, among other undertakings, retailer or licensee agreed "not to sell or deal in any lens similar in tint, color, shade or type to Soft-Lite lenses";

With the result that more than 4,000 individual identical or substantially similar agreements were in full force and effect between it, as licensor, and numerous and divers retailers and retail dealers in all parts of the United States, as licensees, and with effect that competition might be substantially lessened in the optical lens business in the United States between it and its competitors:

Held, That such acts and practices constituted a violation of Section 3 of an Act of Congress approved October 15, 1914.

Before *Mr. Edward M. Averill*, trial examiner.

Mr. Allen C. Phelps for the Commission.

Lehrich & Lehrich, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," the Federal Trade Commission, having reason to believe that the Soft-Lite Lens Co., Inc., a corporation, is violating or has violated the provisions of section 3 of the above-entitled act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the

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public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Soft-Lite Lens Co., Inc., is a corporation with its principal office and place of business located at 119 West Fifty-seventh Street, New York, N. Y.; Ray S. Landis is the president of the said respondent corporation.

PAR. 2. Respondent Soft-Lite Lens Co., Inc., is and has been for many years engaged in the business of causing to be manufactured, of offering for sale, selling, marketing, and distributing a line of glass lenses and lens blanks, designed and intended for general optical uses and purposes; that said line of optical lenses and lens blanks includes and has included single vision and bifocal lenses, uncut lenses and blanks, and edged and prescription lenses, all in various shades, tints, and colors, and the same are being and have been sold, marketed, and distributed under the general trade name of "Soft-Lite," a term used alone to identify said products and also used in combination with certain other trade terms or descriptive words such as "Panoptik," "Kryptok," "Duo-Rede," "Duo-Site," "Duo-Vis," "Thin Lite," "No Glare," "C V," "Unisite," and others; that said line of lenses so handled by respondent is and has been sold on a prescription basis and on a sales from stock plan.

PAR. 3. That in the course and conduct of its said business respondent causes its said lenses to be transported from the State in which the same are manufactured and assembled for distribution, being the State of New York, to, into, and through the various other States of the United States, including the District of Columbia, that said lenses are sold and caused to be transported by respondent from the State of New York to wholesalers, retailers, and dealers in optical goods and supplies in all parts of the United States for resale by the wholesaler to retailers and by the retailer to the ultimate consumer or user; that respondent at some points outside the State of New York maintains stocks of its lenses and merchandise and distributes the same to purchasers through authorized distributors or representatives at such points; that respondent is engaged in commerce as such term is defined in the act herein above particularly described by title, commonly known as the Clayton Act.

PAR. 4. That in the course and conduct of its said business, respondent is and has been in competition with other corporations, individuals, and partnerships similarly engaged in causing the manufacture of or of manufacturing, and in the sale, marketing, and distributing of optical lenses and merchandise used for similar purposes in commerce between and among the various States of the United States.

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PAR. 5. That respondent has made and is making sales of its said products "Soft-Lite" lenses in interstate commerce to wholesalers, retailers, and dealers in all parts of the United States upon the condition that and with the agreement and understanding that the said purchasers shall not sell or deal in any of the lenses or goods of any competitor of respondent which are similar in tint, color, shade, or type to "Soft-Lite" lenses. That respondent has made and is making contracts for the sale of its said "Soft-Lite" lenses in interstate commerce with wholesalers, retailers, and dealers in all parts of the United States containing the same conditions and embodying the same understanding and agreement above set forth. That respondent has and does discount from the price regularly fixed and charged for its said products in favor of purchasers who agree that they will not sell or deal in any lenses or goods of any of respondent's competitors which are similar in tint, color, shade or type to "Soft-Lite" lenses, and who do not do so. Respondent has refused and refuses, as a matter of general practice, to sell its said lenses or permit any of its distributors to do so to any individual, partnership, or corporation unless and until such proposed purchaser agrees to the conditions and enters into the agreement and understanding hereinabove set forth, and respondent has and does revoke its stipulation to sell such products to a purchaser whenever such purchaser fails or neglects to observe or conform to said conditions or to carry out said agreement and understanding by selling or dealing in the products of a competitor which are of the same or similar tint, shade, color or type as respondent's said "Soft-Lite" lenses.

PAR. 6. That in the course and conduct of the said business in commerce respondent requires all retailers and retail dealers to whom it sells its said lenses to enter into a certain written agreement for the sale of such products with respondent, which said agreement is designated as "a registered dispensing license," a sample copy of which, similar in form and contents to those executed and in force, as hereinafter stated, being as follows, to wit:

SOFT-LITE
LENS
COMPANY
Incorporated

REGISTERED DISPENSING LICENSE

THIS AGREEMENT, made and entered into this _____ day of _____, 193__, by and between SOFT-LITE LENS COMPANY, Inc., of 119 West 57th Street, N. Y., Licensor . . . and _____ of _____, Licensee.

WITNESSETH:

WHEREAS, Licensor is the sole and exclusive distributor of Soft-Lite lenses and lens blanks, and

WHEREAS, Licensee is desirous of obtaining a license authorizing the dispensing and sale of said Soft-Lite lenses and the privileges extended to Licensees under the sales service plan,

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable considerations, each to the other in hand paid, receipt of which is hereby acknowledged, and of the mutual covenants herein contained, it is agreed as follows:

1. Licensor hereby grants Licensee a revocable, non-transferable license to sell said Soft-Lite lenses at prices prevailing in the locality in which Licensee conducts his practice or business.

2. Licensee agrees that upon selling a Soft-Lite lens or Soft-Lite lenses, he will place an order therefor with a party holding a license from the Licensor to accept such orders subject to the credit requirements of said licensed party.

3. Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite lenses and further agrees to do nothing which may adversely affect the prestige of said lenses, agreeing not to sell or deal in any lens similar in tint, color, shade or type to Soft-Lite lenses. Said Soft-Lite lenses shall be sold only under the trade name and marks of the Licensor, and only to the patient or consumer.

4. Licensor agrees to furnish sales promotional assistance in the form of letters, bulletins and advertising materials and sales aids of a professional and scientific nature designed to help increase the use and sale of Soft-Lite lenses by the Licensee.

5. Licensor will provide the Licensee with a Dispensing License Certificate suitable for display in his office or establishment. Said Certificate shall at all times be the property of the Licensor and shall be delivered up and returned to the Licensor immediately upon the termination of the License.

6. Licensor may terminate this license at any time, by serving upon Licensee a written notice of thirty days that it elects to terminate this license, and at the expiration of said period this license shall then terminate; but the termination of this license shall not relieve the Licensee from the payment of any moneys due and payable to Licensor or to parties holding a license from Licensor under the provisions of paragraph 2, or from any other obligations due to be performed hereunder at or after the time of said termination.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seals on the day and year first above written.

SOFT-LITE LENS COMPANY, INC.

By _____

By _____

PAR. 7. That at the instance and upon the requirement of respondent, approximately 4,000 individual agreements, identical or substantially similar in form and contents to the sample set forth in the

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preceding paragraph, have been entered into by, and are now in full force and effect between respondent as licensor and numerous and divers retailers and retail dealers in all parts of the United States as licensees; that the so-called license authorizing the dispensing and sale of said "Soft-Lite" lenses, embodied in said agreements, is and has been usually granted upon an application being filed therefor by the retailer, in which the applicant subscribes to the "high professional standards and trade principles upon which Soft-Lite Lenses are made and sold," and agrees to and does purchase a certain specified and required minimum number of respondent's lenses; that one of the "privileges extended to licensees under the sales service plan," referred to in the second "whereas" clause of said agreement, consists of a substantial discount which is given to all licensees, signing and observing such agreements, on purchases of lenses made from respondent, said discount amounting to as much as $33\frac{1}{3}$ percent of the list price which is charged to nonlicensees not executing such an agreement; that respondent ordinarily makes a practice of refusing to sell any of its said products to any person, firm, or corporation selling at retail, unless and until an agreement similar to the sample above set forth is executed, and respondent at times in individual cases has and does unreasonably, arbitrarily, and without cause revoke said agreements and so-called licenses by giving to the licensee named therein the notice therein provided for.

PAR. 8. That in the course and conduct of its said business respondent, before permitting or authorizing any wholesaler to dispense or sell its said product "Soft-Lite" lenses in commerce, customarily requires that such wholesaler stipulate and agree with the respondent that he or it will not, while engaged in the sale of respondent's product, sell or deal in any lens similar in tint, color, shade, or type to "Soft-Lite" lenses; that as a result of said requirement there have been made and now exist in full force and effect agreements and understandings between respondent and its said wholesalers whereby, in consideration of a license to sell and dispense "Soft-Lite" lenses granted by respondent, the wholesaler agrees not to sell or deal in the lenses or goods of any competitor of respondent which are similar in tint, color, shade or type to "Soft-Lite" lenses.

PAR. 9. That the effect of the sales plan and agreements, licenses, conditions, contracts for sale, and understandings hereinabove described, so made, entered into and now existing, binding upon and in full force and effect between respondent and its numerous wholesalers, retailers, and dealers purchasing, reselling, and dealing in said product, "Soft-Lite" lenses, may be to substantially lessen competition in the optical lens business and line of commerce in the United

States between respondent and its said competitors, and to tend to create a monopoly in respondent in the said business and line of commerce, all in violation of said Section 3 of the Clayton Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (the Clayton Act), the Federal Trade Commission on February 10, 1936, issued, and subsequently served, its complaint in this proceeding upon the respondent, Soft-Lite Lens Co., Inc., charging it with acts and practices in violation of Section 3 of the above entitled Act.

After the issuance and service of such complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by Allen C. Phelps, attorney for the Commission, before Edward M. Averill, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, said respondent, Soft-Lite Lens Company, Inc., filed herein its motion to withdraw said answer and to substitute therefor its answer to the complaint admitting certain of the material allegations thereof; and the Commission having considered said motion duly granted the same, and said substituted answer was received and filed as and for the answer of said respondent in this proceeding. Said respondent also stated in said substituted answer that the Commission might proceed to make its findings of fact without further proceedings and that an order might issue and be served upon the respondent requiring it to cease and desist from the practices alleged in the complaint. The said Commission having duly considered the above and being fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Soft-Lite Lens Co., Inc., is a corporation with its principal office and place of business located at No. 745 Fifth Avenue, New York, N. Y. The officers of said respondent corporation are: Nathaniel Singer, president; Raymond G. Landis, vice-president; Elmer Robinson, secretary. The board of directors of said respondent corporation is composed of: Morris Singer, Nathaniel Singer, Elmer Robinson, J. T. Kaplan, and Raymond G. Landis.

PAR. 2. Respondent, Soft-Lite Lens Co., Inc., is and has been for many years engaged in the business of causing to be manufactured, of offering for sale, selling, marketing, and distributing a line of glass lenses and lens blanks, designed and intended for general optical uses and purposes; that said line of optical lenses and lens blanks includes and has included single vision and bifocal lenses, uncut lenses and blanks, and edged and prescription lenses, all made in only one tint or color known and designated in the trade as rose or flesh in four densities thereof, and the same are being and have been sold, marketed, and distributed under the general trade name of "Soft-Lite", a term used alone to identify said products and also used in combination with certain other trade terms or descriptive words such as "Panoptik," "Kryptok," "Duo-Rede," "Duo-Site," "Duo-Vis," "Thin Lite," "No Glare," "C V," "Unisite," and others; that said line of lenses so handled by respondent is and has been sold on a prescription basis and on a sales from stock plan.

PAR. 3. In the course and conduct of its said business, respondent causes its said lenses to be transported from the State in which the same are manufactured and assembled for distribution, being the State of New York, to, into and through the various other States of the United States, including the District of Columbia. Said lenses are sold and caused to be transported by respondent from the State of New York to wholesalers only of optical goods and supplies in all parts of the United States for resale by the wholesaler to retailers, and by the retailer to the ultimate consumer or user. Respondent is engaged in commerce as such term is defined in the act hereinabove particularly described by title, commonly known as the Clayton Act.

PAR. 4. In the course and conduct of its said business, respondent is and has been in competition with other corporations, individuals, and partnerships similarly engaged in causing the manufacture of or of manufacturing, and in the sale, marketing, and distribution of optical lenses and merchandise used for similar purposes in commerce between and among the various States of the United States.

PAR. 5. In the course and conduct of the said business in commerce, respondent has required many retailers to enter into a certain written agreement for the sale of such products with respondent, which said agreement is designated as "a registered dispensing license," a sample copy of which, similar in form and contents to those executed and in force being as follows:

Findings

SOFT-LITE
LENS COMPANY
Incorporated

REGISTERED DISPENSING LICENSE

THIS AGREEMENT, made and entered into this _____ day of _____, 193____, by and between SOFT-LITE LENS COMPANY, Inc., of 745 Fifth Avenue, N. Y., Licensor _____ and _____ of _____, Licensee.

WITNESSETH:

WHEREAS, Licensor is the sole and exclusive distributor of Soft-Lite lenses and lens blanks, and

WHEREAS, Licensee is desirous of obtaining a license authorizing the dispensing and sale of said Soft-Lite Lenses and the privileges extended to Licensees under the sales service plan.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable considerations, each to the other in hand paid, receipt of which is hereby acknowledged, and of the mutual covenants herein contained, it is agreed as follows:

1. Licensor hereby grants Licensee a revocable, nontransferable license to sell said Soft-Lite lenses at prices prevailing in the locality in which Licensee conducts his practice or business.

2. Licensee agrees that upon selling a Soft-Lite lens or Soft-Lite lenses, he will place an order therefor with a party holding a license from the Licensor to accept such orders subject to the credit requirements of said licensed party.

3. Licensee agrees to use his best efforts to promote and further the use and sale of Soft-Lite Lenses and further agrees to do nothing which may adversely affect the prestige of said lenses, agreeing not to sell or deal in any lens, similar in tint, color, shade or type to Soft-Lite lenses. Said Soft-Lite lenses shall be sold only under the trade name and marks of the Licensor, and only to the patient or consumer.

4. Licensor agrees to furnish sales promotional assistance in the form of letters, bulletins and advertising materials and sales aids of a professional and scientific nature designed to help increase the use and sale of Soft-Lite lenses by the Licensee.

5. Licensor will provide the Licensee with a Dispensing License Certificate suitable for display in his office or establishment. Said Certificate shall at all times be the property of the Licensor and shall be delivered up and returned to the Licensor immediately upon the termination of the License.

6. Licensor may terminate this license at any time, by serving upon Licensee a written notice of thirty days that it elects to terminate this license, and at the expiration of said period this license shall then terminate; but the termination of this license shall not relieve the Licensee from the payment of any moneys due and payable to Licensor or to parties holding a license from Licensor under the provisions of paragraph 2, or from any other obligations due to be performed hereunder at or after the time of said termination.

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IN WITNESS WHEREOF, the parties hereunto have set their hands and seals on the day and year first above written.

SOFT-LITE LENS COMPANY, INC.

By _____

By _____

Respondent enters into no written or oral agreement of any kind or nature with the wholesalers to whom it sells its products, but requests its wholesalers to resell its products only to such retailers with whom respondent has such license agreements.

PAR. 6. At the instance and request of the respondent, more than 4,000 individual agreements identical or substantially similar in form and contents to the sample set forth in the preceding paragraph have been entered into by, and are now in full force and effect between, respondent as licensor and numerous and divers retailers and retail dealers in all parts of the United States as licensees. The so-called license authorizing the dispensing and sale of said "Soft-Lite" lenses, embodied in said agreements, is and has been usually granted upon an application being filed therefor by the retailer, in which the applicant subscribes to the "high professional standards and trade principles upon which the Soft-Lite lenses are made and sold."

PAR. 7. The effect of the use of the said license agreements, as set forth in paragraph 5 hereof, so made, entered into and now existing between respondent and its numerous retailers and retail dealers purchasing, reselling and dealing in said product, "Soft-Lite" lenses, may be to substantially lessen competition in the optical lens business in the United States between respondent and its said competitors.

CONCLUSION

The aforesaid acts and practices of respondent are in violation of Section 3 of said Act of Congress approved October 15, 1914, commonly known as the Clayton Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substituted answer filed herein by respondent on the 17th day of June 1938, admitting certain of the material allegations of the complaint, for the purpose of this proceeding only and waiving the taking of further evidence and other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent, Soft-Lite Lens Co., Inc., has violated the provisions

of Section 3 of an Act of Congress, approved October 15, 1914, entitled "An Act to supplement existing laws against restraints and monopolies and for other purposes."

It is ordered, That respondent, Soft-Lite Lens Co., Inc., a corporation, and its officers, directors, agents, and employees, in connection with the manufacture, sale, and distribution of optical lenses in interstate commerce, forthwith cease and desist from:

Requiring by oral or written condition, agreement, or understanding with any wholesale or retail dealer in optical lenses or blanks, stock dealer or licensee, prescription dealer or licensee, optician, optometrist or oculist, or any other distributor of Soft-Lite lenses purchasing said lenses directly or indirectly from respondent for resale, that he or they will not, while engaged in selling respondent's said lenses, sell or deal in any other lenses of the same type as the Soft-Lite lens, or of a similar tint, color, or shade—*provided, however*, that nothing herein shall require respondent to cease and desist from seeking to prevent the palming off of other lenses similar in color to Soft-Lite lenses as and for Soft-Lite lenses, on purchasers desiring to buy Soft-Lite lenses, or the substitution of such other lenses for Soft-Lite lenses, in connection with the sale of the latter by dealers to users.

It is further ordered, that respondent shall, within 30 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
UNITED DISTILLERS (OF AMERICA) LTD.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2807. Complaint, May 15, 1936—Decision, June 23, 1938

Where a corporation (subsidiary of a parent holding company which also owned and operated a distilling corporation, along with other corporate interests), engaged, prior to erection and operation of its own distillery, as wholesaler and as rectifier in purchasing and selling or in purchasing, rectifying, bottling, and reselling whiskies, gins, and other alcoholic beverages, procured, directly or indirectly, through members of the corporate family group of which it was a part, as above indicated, from said distilling company and parent concern and also, and for a time and to a limited extent, elsewhere, in substantial competition with others engaged, as the case might be, in (1) manufacture by distillation, i. e., production by original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, of whiskies and other aforesaid beverages, and in sale thereof in trade and commerce, and who truthfully use word "Distillers" as part of their corporate or trade name and on their stationery and advertising and on the labels of the bottles in which they sell and ship their products, and (2) concerns engaged in purchasing, rectifying, blending, bottling, and selling whiskies, etc., and who do not use said word as above set forth—

Falsely represented, through use of word "Distillers" in its corporate name printed on its stationery and advertisements and on the labels attached to the bottles in which it sold and shipped its said products and in various other ways, to its customers, and supplied latter with means of thus representing to their vendees, whether retailers or ultimate consuming public, that the whiskies and other alcoholic beverages bottled by it were made through process of distillation from mash, wort, or wash;

With effect of misleading and deceiving dealers and purchasing public into the beliefs that all of the aforesaid representations were true and that all the whiskies, gins, and other spirituous beverages bottled and sold by it were by it made and distilled from mash, wort, or wash, as above set forth, and with effect of inducing dealers and purchasing public, acting in such beliefs, to purchase said whiskies, etc., bottled and sold by it, and of thereby diverting trade to it from competitors who did not, by their corporate or trade names or in any other manner, misrepresent that they were manufacturers by distillation from mash, wort, or wash of such products, purchase of which, thus labeled with name of distiller or distilling company, commands a preference and tends to induce public to buy products of concern thus using such word in preference to those of other bottlers, in the belief that, in so doing, they are buying from the actual distiller and that, in thus buying as directly as possible, they get a better grade of merchandise, save money, or secure a more uniform product; to the substantial injury of substantial competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.