

IN THE MATTER OF
HILLYARD OPTICAL COMPANY, ET AL.

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

Docket 4984. Complaint, June 26, 1943—Decision, Apr. 7, 1945

Where three partners engaged in the District of Columbia in the offer and sale of eye-glasses, lenses and frames therefor to members of the public; through advertisements in newspapers and by other means, directly and by implication—

(a) Represented falsely that their said business was the oldest and largest optical company in Washington, D. C., and had been in existence for over 40 years; The facts being that their business had its origin in 1939 and their partnership, similarly designated, was formed in 1941;

(b) Represented falsely that they made free examinations of the eyes of prospective customers;

The facts being that where a customer purchased glasses, cost of the examination was included in the price thereof, while in cases where for any reason, customer decided not to purchase glasses, they frequently charged and sought to collect a fee of \$2 or \$3 for the examination, and in some instances, where the customer objected to paying for the examination, which he understood from their advertising was free, they browbeat and threatened him, and otherwise sought to force payment of such fee before he was permitted to leave the premises;

(c) Represented that they rendered efficient and satisfactory service, and guaranteed satisfaction to their customers;

The facts being that in many instances where they failed to render such efficient and satisfactory service, they also failed and refused to honor the guarantee of satisfaction made in their advertisements by statements such as "This is your assurance of guaranteed satisfaction"; prescribed glasses, in some instances, after an examination which lasted but a few minutes; furnished glasses to customers which did not correspond to their own prescription; many customers complained to the Board of Optometry for the District of Columbia; and, in many cases where customers were dissatisfied and appealed to them, in some cases many times, to correct faults in the glasses, furnish them with satisfactory glasses, or make refund or adjustment, failed or refused to do so and, in one instance, even sought to sell to customer her old glasses, which they had caused her to leave with them, as new;

(d) Represented that the prices advertised were special and reduced prices and available for a limited time only; that complete single-vision spherical lens glasses, with any shape frames or rimless, and with case and cleaner, usually or regularly priced at \$15, were only \$5, and that bifocal genuine spherical Kryptok white lenses of a regular value of \$12 were offered for only \$5;

The facts being that said representations were false: such representations, continually repeated, as "Two Specials All This Week" in advertising glasses for \$5, "\$15 Value for \$5," and "Regular Value \$15," were used as a means of inducing prospective customers to come to their place of business, whereupon they sought to sell them glasses at much higher prices; they used many means to discourage prospective customers from insisting upon glasses at \$5, such as statements that the \$5 glasses would not be satisfactory, or that the customer could not be fitted with \$5 glasses, and in some instances accomplished such persuasion when the customer realized that he would have to pay for an examination if he did not take glasses, and, rather than lose the cost of examination, consented to buy higher-priced glasses; and

Where a fourth individual, the father of said partners, similarly engaged in said District; through like advertisements, directly and by implication—

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- (e) Falsely represented that he was a college graduate optometrist or physician; and
- (f) Represented falsely that complete glasses with single-vision lenses (except cylindrical or tint lenses) in frames or rimless mountings, with case and cleaner, having a regular value of \$12, were offered at a special price of \$5, and that bifocal genuine Kryptok white lenses of a regular value of \$12 were offered at a special price of \$5; The facts being he made it a practice to attempt to persuade persons coming into his place of business for \$5 glasses to purchase higher-priced glasses or more expensive frames and was able to sell more expensive glasses to about three out of ten such customers; the so-called special price of \$5 was for glasses with a rhodium frame or rhodium mountings, whereas glasses which sold for \$12 included a "better job" and a higher-priced frame; the Kryptok lenses which he offered for \$5 and represented as having a \$12 value, did not in fact have any such value, being cheaper than another type of bifocal lens which he regularly sold for \$9.75 and which he attempted to sell to customers by explaining their advantages and greater value as compared with Kryptok lens; customers were misled by his \$5 offer of lenses into believing that the frames were included; and the so-called "Specials" were continuously repeated and were in fact his usual and customary prices charged to customers to whom he was unable to sell more expensive frames or lenses;
- With the effect of misleading and deceiving a substantial number of the purchasing public into the erroneous belief that such false representation were true, and to induce it because of such belief, to purchase said glasses:
- Held*, That said acts and practices were all to the injury and prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. John M. Russell for the Commission.

Mr. Jack L. Friedlander, of Washington, D. C., for respondents.

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 Francis R. Hillyard, Sr., Bernard B. Hillyard, Francis R. Hillyard, Jr., Frederick C. Hillyard, individuals and copartners, trading as Hillyard Optical Company, Hillyard's Optical Service, Dr. F. R. Hillyard & Son and F. R. Hillyard & Son, and John Giddings, an individual, hereinafter referred to as respondents, have violated the provisions of the 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. Respondents, Francis R. Hillyard, Sr., Bernard B. Hillyard, Francis R. Hillyard, Jr., and Frederick C. Hillyard, are individuals and copartners, doing business under the firm names of Hillyard Optical Company, Hillyard's Optical Service, Dr. F. R. Hillyard & Son and F. R. Hillyard & Son. The address of respondent, Francis R. Hillyard, Sr., is 5326 Georgia Avenue, Washington, D. C.; Bernard B. Hillyard and Francis R. Hillyard, Jr., 711 G Street, N. W., Washington, D. C. and Frederick C. Hillyard, 521 H Street, N. E., Washington, D. C. Respondent, John Giddings, is an individual, with his address at 617 Seventh Street, N. W. Washington, D. C., and was an employee of the other respondents for some time prior to about February 1, 1943.

PAR. 2. Respondents, other than John Giddings, are now and have been for more than two years last past, engaged in the business of operating optical stores in Washington, D. C., under the names above designated, and in offering for sale and selling eyeglasses, lenses and frames

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therefor to the general public in the District of Columbia. Prior to about February 1, 1943, the respondent, John Giddings, was an employee of the other respondents. All of said respondents have cooperated each with the other and have acted in concert in the acts and practices hereinafter alleged.

PAR. 3. In the course and conduct of their aforesaid business the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products and their qualifications by the United States mails and various other means in commerce as "commerce" is defined in the Federal Trade Commission Act. The respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products and qualifications, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said products in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements inserted in newspapers and by other means in commerce, are the following:

WASHINGTON'S LARGEST AND OLDEST OPTICAL CO.

711 G St. N.W.

521 H St. N.W.

Two Specials All This Week

Complete Glasses

Single Vision

Spherical pre-

scription Lenses

\$5

OR

Any Shape.

\$15.00

Frame or Rimless

Value

Case and Cleaner

BIFOCALS, gen-

uine Kryptok

Spherical pre-

scription lenses,

any shape,

\$5

to see far and near

Reg. Value \$15.

Now, white lenses only.

COLLEGE GRADUATE EYESIGHT SPECIALISTS

ESTABLISHED

46 YEARS.

One Week

SPECIAL

Washington's oldest and largest family of eyesight specialists, associated with the optical profession for over 40 years. This is your assurance of guaranteed satisfaction. By operating our own shop we are able to give you the lowest price on all of your optical needs.

FREE

EXAMINATION

\$5

\$12.00

VALUE.

The Hillyard Optical Company is owned and operated by College Graduated Eyesight Specialists.

DR. F. R. HILLYARD & SON

Attention! Be sure to consult a College Graduate Eyesight Specialist. We have been Practicing Optometrists for 44 years and have always given efficient service. We are located in our own building and out of the high rent district. All lens surfacing done in our own laboratory on the premises. We fill prescriptions and will duplicate lenses.

* * * 5326 Georgia Ave., N.W.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically set out herein, respondents represent, directly and by implication, that all of said individual respondents are college graduate optometrists or opticians, that said business is the oldest and largest optical company in Washington, D. C. and has been in existence for over forty years; that respondents guarantee satisfaction to their customers; that they make free examinations of prospective customers' eyes; that they render efficient and satisfactory service; that the offers made are special and reduced prices and for a limited time only; that respondents sell customers complete single-vision spherical lens glasses with any shape frames or rimless with case and cleaner worth \$15 for only \$5; that they sell customers any shape bifocal, far and nearsighted, genuine Kryptok spherical white lenses regularly valued at \$15.00 for only \$5.00; that said respondents by operating their own shops are able to sell, and sell, every kind of complete eyeglasses and lenses at lower prices than any other opticians or optometrist.

PAR. 5. The foregoing statements and representations are grossly exaggerated, false and misleading. Respondent, Francis R. Hillyard, Sr., is not a college graduate. The Hillyard Optical Company is not the oldest or largest optical company in Washington, D. C., but has only been in existence for about three years. In many instances, respondents do not, and will not, satisfy their customers by providing them with satisfactory glasses or refunding money paid for unsatisfactory glasses. Respondents do not make free examinations of customers' eyes. Whenever glasses are sold, after examination, the charge for the examination is included in the price for the glasses. In case no glasses are purchased, after examination, a charge is made for such examination. Respondents do not render efficient and satisfactory service in that only a perfunctory examination of the eyes is made, and in many instances glasses are ill-fitted and absolutely useless to the purchaser. The offers made and designated as "Special" are not special or reduced prices and are not made for a limited time only, but are regular and continuing offers made by respondents for an indefinite time. Respondents' said offers to sell glasses or lenses for \$5.00 are not made in good faith, but are solely for the purpose of inducing prospective customers to call at respondents' places of business.

When such prospective customers call at respondents' places of business to purchase glasses and lenses, pursuant to and in accordance with respondents' said advertisements, after respondents examine prospective customers' eyes, they inform them glasses will cost a certain figure, much higher than \$5.00; and when customers protest, respondents tell them that the \$5.00 glasses will not be of any value for their eye condition and usually they are eventually sold glasses at much higher prices. Only a small proportion of respondents' business consists of glasses or lenses for \$5.00. Respondents do not sell comparable glasses, lenses or frames at lower prices than many others engaged in like businesses. A large proportion of the lenses sold by respondents are stock lenses and no shop work is done by them, and the prices stated in the advertisements to be the regular prices for glasses and lenses are fictitious and greatly in excess of the regular and going retail prices therefor.

PAR. 6. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, disseminated as aforesaid, has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and

mistaken belief that all of such statements and representations are true and into the purchase of substantial quantities of respondents' glasses, frames and lenses as a result of such erroneous and mistaken beliefs.

PAR. 7. The aforesaid acts and practices of respondents, herein alleged, are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 26, 1943, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of answers thereto by certain respondents, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before 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, the proceeding regularly came on for final hearing before the Commission on the complaint, the answers thereto, testimony and other evidence, report of the trial examiner, and briefs in support of and in opposition to the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being now 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. (a) Respondent, Francis R. Hillyard, Sr., is an individual, trading as Dr. F. R. Hillyard & Son and as F. R. Hillyard & Son, with his principal place of business at 5326 Georgia Avenue, N. W. Washington, D. C. This respondent is the father of respondents, Bernard B. Hillyard, Frederick C. Hillyard, and Francis R. Hillyard, Jr.

(b) Respondents, Bernard B. Hillyard, Frederick C. Hillyard, and Francis R. Hillyard, Jr., individuals, are copartners trading as Hillyard Optical Company, with their places of business at 711 G Street, N. W., and 521 H Street, N. E., Washington, D. C.

(c) Respondent, John Giddings, an individual, was, during a part of the time covered by the complaint herein, an employee of the partnership at the 711 G Street, N. W., place of business.

PAR. 2. Respondents, other than John Giddings, are now, and for several years last past have been, engaged in the business of operating optical stores in Washington, D. C., and in offering for sale and selling eyeglasses, lenses, and frames therefor to members of the public in the District of Columbia. Respondent John Giddings, in his capacity as an employee of the Hillyard Optical Company, has been similarly engaged on behalf of his employers.

PAR. 3. In the course and conduct of their aforesaid businesses, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning

their said products and their qualifications by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said products and qualifications by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said products in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as above set forth, by the United States mails, by advertisements inserted in newspapers, and by other means in commerce, are the following by the Hillyard Optical Company:

Two Specials All This Week

Complete Glasses		BIFOCALS, genuine	
Single Vision		Kryptok lenses to	
Frame or Rimless	\$5	see far and near.	\$5
Examination		Reg. value, \$12.00.	
Case and Cleaner		Now, white lenses only	

By operating our own shop we are able to give you the lowest price on all of your optical needs.

(Picture of Glasses)	\$5
Free	\$12.00
Examination	Value

ATTENTION: Know your eyesight specialist; who is he? Is he a COLLEGE GRADUATE? These questions are VITAL to your health and happiness. CONSULT A COLLEGE GRADUATE EYESIGHT SPECIALIST. The name of HILLYARD has been associated with the optical profession for over 40 years. Washington's largest and oldest family of eyesight specialists.

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TWO CONVENIENT LOCATIONS

HILLYARD OPTICAL CO.

711 G St. N. W. * 521 H St. N. E.

Hours, 8:30 A.M. to 6 P.M.

Hours, 8:30 A.M. to 7:30 P.M.

Two Specials All This Week

\$5 (Picture of Glasses)

Free
Examinations
With Glasses

Complete Glasses	
Single Vision	
Spherical Pre-	\$5
scriptions Lenses,	
Any Shape	\$15.00
Frame or Rimless	Value
Case and Cleaner	

BIFOCALS; genuine Kryptok spherical prescription lenses, any shape, to see far and near. Reg. value, \$15.00. Now, white lenses only. \$5

Two Convenient Locations

HILLYARD OPTICAL CO.

711 G St. N. W. * 521 H St. N. E.

Hours, 8:30 A.M. to 6 P.M.

Hours, 8:30 A.M. to 7 P.M.

One
Week SPECIAL

(Picture of Glasses)

Washington's oldest and largest family of eyesight specialists, associated with the optical profession for over 40 years. This is your assurance of guaranteed satisfaction.

Complete Glasses	
Single Vision	
Any Shape Lens	
Spherical Lenses	\$5
Reg. Frame or	
Rimless	
Case and Cleaner	

Bifocals. Genuine Kryptok Spherical Lenses. Any Shape, \$5 To see Far and Near. Reg. Value \$12.00. White lenses Only. Now

Free Examination with Glasses

WHY THE
HILLYARD
OPTICAL CO. IS
WASHINGTON'S
LEADING
OPTICAL
ESTABLISHMENT

When patronizing the Hillyard Optical Co., you deal with Washington's largest and oldest optical establishment—43 years. We devote 100% of our time to the optical profession. The Hillyard Optical Co. is owned and operated by College Graduated Eyesight Specialists. In operating our own shop we give you the lowest prices and quickest service for your optical needs.

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HILLYARD OPTICAL CO.
711 G St. N. W. * 521 H St. N. E.

2 Locations

and the following by Francis R. Hillyard, Sr.:

SHOPPERS

Special No. 1	Special No. 2
Complete Glasses	Bifocals, Genuine
Single Vision	Kryptok White
Frame or Rimless \$5	Lenses to See Far \$5
Examination	and Near. Reg.
Case & Cleaner	Value, \$12.00 NOW
(Picture of Glasses)	\$5
	\$12.00
	Value

ATTENTION! Be sure to consult a College Graduate Eyesight Specialist. We have been Practicing Optometrists for 44 years and have always given efficient service. We are located in our own building and out of the high rent district. All lens surfacing done in our own laboratory on the premises. We fill prescriptions and will duplicate lenses.

The Above Prices Do Not Include Cylinder or Tinet Lenses

Office Hours 8:30 A.M. to 7:30 P.M.

DR. F. R. HILLYARD & SON

5326 Georgia Ave. N. W.

Parking Facilities

Telephone TAYlor 8644

PAR. 4. Through the use of the statements and representations contained in the aforesaid advertisements, and others of similar import not specifically set out herein, respondents, Bernard B. Hillyard, Frederick C. Hillyard, and Francis R. Hillyard, Jr., trading as Hillyard Optical Company, have represented, directly and by implication, that their said business is the oldest and largest optical company in Washington, D. C., and has been in existence for over 40 years; that respondents guarantee satisfaction to their customers; that they make free examinations of the eyes of prospective customers; that they render efficient and satisfactory service; that the prices advertised are special and reduced prices and are available for a limited time only; that complete single-vision spherical lens glasses and with any shape frames or rimless, with case and cleaner, usually or regularly priced at \$15, are only \$5, and that bifocal genuine spherical Kryptok white lenses of a regular value of \$12 are offered for only \$5. Respondent, Francis R. Hillyard, Sr., through his aforesaid advertisements, and others similar thereto not specifically set out herein, represents, directly and by implication, that he is a college graduate optometrist or optician; that complete glasses with single-vision lenses (except cylindrical or tinet lenses) in frames or rimless mountings, with case and cleaner, having a regular value of \$12, are offered at a special price of \$5, and that

bifocal genuine Kryptok white lenses of a regular value of \$12 are offered at a special price of \$5.

PAR. 5. The aforesaid statements and representations by Francis R. Hillyard, Sr., are grossly exaggerated, false, and misleading. Said respondent is not a college graduate optometrist or optician. The single-vision glasses offered for \$5 are not of a \$12 value as represented. He makes it a practice to attempt to persuade persons coming into his place of business for \$5 glasses to purchase higher-priced glasses or more expensive frames and is able to sell more expensive glasses to about three out of ten such customers. The so-called special price of \$5 is for glasses with a rhodium frame or rhodium mountings, whereas glasses sold for \$12 include a "better job" and a higher-priced frame or a frame with gold mountings. The Kryptok lenses offered for \$5 and represented as having a \$12 value do not in fact have any such value. The Kryptok lens is made in two parts having different densities and is cheaper than another type of bifocal lens which is regularly sold by respondent for \$9.75. Respondent attempts to sell more expensive lenses to customers seeking \$5 bifocal lenses by explaining the advantages and greater value of the \$9.75 lens as compared with the Kryptok lens. Respondent testified that fully three out of five customers who ask for \$5 bifocal lenses in response to his advertisement believe they are going to get a complete set of glasses for \$5, and when he explains that the advertisement offers only lenses and that the frames are extra, customers say to him: "Now, you are misrepresenting, you tricked me into coming down here just to get me down here and now you say it is not \$5." He has difficulty in making them understand the advertisement and testified that "People are so dumb at times it just makes you tired." There was a period of time during which respondent ran the advertisement offering complete single-vision glasses and Kryptok bifocal lenses at \$5 continuously, and these prices were not special but were the usual and customary prices charged at that time to those customers to whom the respondent was unable to sell more expensive frames or lenses.

PAR. 6. (a) The aforesaid statements and representations by respondents, Bernard B. Hillyard, Frederick C. Hillyard, and Francis R. Hillyard, Jr., trading as Hillyard Optical Company, are grossly exaggerated, false and misleading in the particulars hereinafter set out.

(b) The Hillyard Optical Company is not the oldest optical company in Washington, D. C., and has not been in existence for over 40 years. As a matter of fact, the business now designated as Hillyard Optical Company had its origin in 1939 and the partnership now designated as Hillyard Optical Company was formed in 1941.

(c) Respondents do not furnish "free examination" or "free examination with glasses." In those instances where a customer purchases glasses, the cost of the examination is included in the price of the glasses and it is not in any sense "free." In those cases where, because of the manner in which the customer is treated or because of the perfunctory nature of the examination given, or for other reasons, the customer decided not to purchase glasses from respondents, they frequently charge and seek to collect a fee of \$2 or \$3 for the examination. In some instances where the customer objects to paying for the examination when he understood from respondent's advertising that it was free, respondents have browbeaten, threatened, and otherwise sought to force payment of such fee before the customer was permitted to leave the premises.

(d) In the many instances where respondents have failed to render the efficient and satisfactory service which they have represented that they

furnish, they have also failed and refused to honor the guarantee of satisfaction made in their advertisements by means of statements such as "This is your assurance of guaranteed satisfaction." The record shows a number of instances where respondents have prescribed glasses after an examination which lasted but a few minutes—in some cases 5 minutes, or 5 to 10 minutes, or 10 to 15 minutes, or less than 20 minutes. The testimony of qualified optometrists is to the effect that an adequate eye examination for the purpose of prescribing glasses usually requires 30 or more minutes, and only in an unusual and exceptional instance can an adequate examination be made in as little as 20 minutes. The record shows several specific instances where the glasses furnished to customers by respondents did not correspond to respondents' own prescription for such customers. Many customers of respondents have complained about respondents to the Board of Optometry for the District of Columbia. An official of that board testified that he had received a great many complaints concerning respondents, that he had compared the glasses furnished with the prescriptions given and he had yet to find an instance where the glasses supplied by respondents corresponded to their prescription. In many cases where customers were dissatisfied with the glasses purchased from respondents and appealed to respondents, in some cases many times, to correct the faults in the glasses, furnish them with satisfactory glasses, or make some refund or adjustment, respondents have failed or refused to do so. For instance, one customer who went to respondents' place of business to purchase glasses advertised for \$5 was sold a pair of glasses for \$12. She could not see satisfactorily with the glasses and when she tried to use them they gave her severe headaches. She sought many times without success to persuade respondents to correct the glasses or give her satisfactory glasses. In another instance respondents caused a customer to leave her old glasses with them and then sought to sell these old glasses to the customer again as being new glasses. Respondents insisted that the glasses were new even after the customer pointed out certain identifying marks by which she knew the glasses to be her old glasses.

(e) Respondents' representations such as "Two Specials All This Week" in advertising glasses for \$5, "\$15 Value for \$5," and "Regular Value \$15" falsely indicate that customers may secure a special price or a reduced price for a limited time which they do not in fact receive. Such representations are used as a means of inducing prospective customers to come to their place of business, whereupon respondents seek to sell them glasses at much higher prices. The continuous repetition of such offers makes it plain that they are not, in truth and in fact, limited in point of time. It is also plain from the testimony of persons who have sought to buy glasses from respondents at \$5 and have paid \$12 or \$15 or more, that respondents do not sell for \$5 glasses for which they customarily charge \$12 or \$15. Respondents use many means to discourage prospective customers from insisting upon glasses at \$5, such as statements that the \$5 glasses will not be satisfactory, or that the customer can not be fitted with \$5 glasses; and in some instances the persuasion is accomplished when the customer realizes that he will have to pay for an examination if he does not take glasses, and rather than lose the cost of examination consents to buy higher-priced glasses.

PAR. 7. The use by the various respondents of the false, deceptive, and misleading statements and representations disseminated as aforesaid has had the capacity and tendency to mislead and deceive, and has misled and

deceived, a substantial number of the purchasing public into the erroneous and mistaken belief that such false advertisements, statements, and representations are true, and to induce a substantial number of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' glasses, frames, and lenses.

CONCLUSION

The aforesaid acts and practices are all to the injury and prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of certain respondents, testimony and other evidence taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner, and briefs filed herein (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

I. *It is ordered*, That respondents, Bernard B. Hillyard, Frederick C. Hillyard, and Francis R. Hillyard, Jr., individually and as copartners, trading as Hillyard Optical Company, or under any other name, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of eyeglasses, lenses, or frames, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

(a) That their business is the oldest optical establishment in Washington, D. C., or that they have been engaged in the optical business longer than is the fact.

(b) That any service or commodity for which a charge is made, directly or indirectly, or the cost of which is included in the purchase price of any other service or commodity, is free, either by the use of the term "free" or by any other term or terms of similar import or meaning.

(c) That they guarantee satisfaction unless they do in fact furnish glasses satisfactory to their customers or accept the return of unsatisfactory glasses and refund the purchase price thereof.

(d) That the customary or usual price for any kind or type of glasses, lenses, or frames is a special or reduced price; or that an offer of glasses, lenses, or frames is limited in point of time when the offer is not in fact so limited; or that glasses, lenses, or frames offered are of a value in excess of the usual or customary price thereof.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said eyeglasses, lenses, or frames, any advertisement which contains any of the representations prohibited in paragraph 1 above.

II. *It is further ordered*, That respondent, Francis R. Hillyard, Sr., an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of eyeglasses, lenses, or frames, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which represents, directly or through inference:

(a) That he is a college graduate optometrist or optician.

(b) That the customary or usual price for any kind or type of glasses, lenses, or frames is a special or reduced price, or that glasses, lenses, or frames offered are of a value in excess of the usual or customary price thereof.

2. Disseminating or causing to be disseminated, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said eyeglasses, lenses, or frames, any advertisement which contains any of the representations prohibited in paragraph 1 above.

III. *It is further ordered*, That, inasmuch as respondent, John Giddings, had no managerial direction or control over the business of the respondents he served as an employee, the complaint herein be, and the same hereby is, dismissed as to said John Giddings without prejudice to the right of the Commission to institute further proceedings should facts warrant such action.

IV. *It is further ordered*, That respondents shall, within 60 days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

NATIONAL SECRETARIES' ASSOCIATION, AND H. ROBINSON SHEPHERD, RUTH HOSTETLER, HILARY A. BUFTON, AND GEORGE TURNER, INDIVIDUALLY AND AS OFFICERS AND DIRECTORS THEREOF

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

Docket 5003. Complaint, July 15, 1943—Decision, Apr. 10, 1945

Where a corporation and its officers, by two of whom it was organized and incorporated as not for profit, but who actually operated it as a private business to promote the sale and distribution of their books through sale of memberships therein by salesmen or "registrars" to persons holding secretarial positions who were thereupon organized into local chapters, and by virtue of their membership contracts became entitled to receive aforesaid books "Better Letters—Lessons in English," "Better Letters—Quiz Book," "Webster's Encyclopedic Dictionary," and accident insurance policy, and a year's subscription to a monthly magazine, along with other benefits represented as accruing, namely, special rates at many vacation resorts and opportunities for better positions through an employment service; to induce the purchase of their books and memberships in their said association—

- (a) Represented directly and through their said agents or "registrars" that the association would provide special courses of instruction similar to those of a correspondence school; stating, in furtherance of such representations, in their advertising, including application forms, under the caption "INDIVIDUAL INSTRUCTION," "You have the undivided attention of your instructor. When your lessons are before him you are the only student in his class";

The facts being no provisions were made for giving any such course to members but the educational features were limited to supplying the members with said publications, with suggestions that the "Quiz Book" be covered in the course of meetings among the members;

- (b) Represented, as aforesaid, that purchasers of memberships would receive group health, accident, and hospitalization policies;

The fact being the only insurance policy supplied to the members was a special accident contract very limited in scope and with no health insurance features;

- (c) Represented, as aforesaid, that the association maintained an employment service for its members and that assistance would be given by it in securing employment for them, through Article IV of its constitution, distributed among the members, providing for "assistance in securing employment for its members," and through including in its advertising material and on application blanks, under caption "EMPLOYMENT SERVICE," the statement "Upon completion of training you are eligible to file for the better positions which employers list with the national headquarters of the Association";

The facts being they maintained no employment service or facilities therefor, and efforts with reference to employment were limited to adoption of a by-law by the board of governors providing that the members pledge themselves to report to the employment committee of their local chapters positions which from time to time might come to their attention; and

- (d) Represented through their said "registrars" that the association was an old, established organization, with chapters located all over the United States;