

IN THE MATTER OF

M. PORTNOW

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

Docket 4887. Complaint, Jan. 20, 1943—Decision, Feb. 27, 1946

Trusses for hernia are useful in furnishing temporary support to hernias, thereby relieving pain and discomfort temporarily in the average case, and in certain cases of hernia—in the aged, for instance, where operation would be inadvisable—properly fitted trusses would be indicated.

Where an individual engaged in the manufacture and interstate sale and distribution of trusses for rupture or hernia; through statements in advertisements disseminated through the mails and in newspapers, directly and by implication—

- (a) Represented that the use of his said devices, which were made for reducible hernias only, would end all rupture troubles and furnish sure rupture relief for all types and kinds of ruptures, and would provide relief for all ruptures without surgery;

The facts being that, with the exception of umbilical hernias in the new born, no valid claim can be made that a truss will close abnormal or hernial openings in the sense of bringing about an organic union of tissues, which can be accomplished only by means of a surgical operation; while said device might help to hold a reducible hernia in place, some hernias will not remain reduced under movement and internal pressure, and will reappear even while any truss is being used; it would be of no value whatsoever in conditions of irreducible hernias; no external device, truss, or belt of any kind will of itself cure hernia and obviate the necessity of surgical procedure;

- (b) Represented that his said device was new in principle or design and essentially different from other trusses;

The facts being that while his said truss device—which was made in accordance with patents for improvements on truss devices in common use issued to his father—was new in that it differed in construction, design, and material from other trusses, it was not new in the sense that it operated in the control of rupture in a different manner or upon a different principle from others;

- (c) Represented that he was a famous hernia specialist known as such since 1898;

The facts being that while the business was founded in 1898 by said individual's father, and while he worked for his father for many years, until the latter's retirement in 1940, and subsequently conducted the business continuously, and had devoted himself to and made a study of the truss business during his entire business life, and hence might appropriately be termed a "truss specialist" or "specialist in trusses," he was not a graduate in medicine or surgery and therefore could not properly represent himself to be a hernia specialist;

- (d) Represented that he had been a member of the Jewish Workman's Circle for 32 years, and that he conducted the largest truss store in the city of New York;

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The facts being that while his father had been a member of said organization for over 32 years, and was still a member, said individual was not and had not been a member, and did not conduct the largest truss store in New York;

With the effect of misleading a substantial portion of the purchasing public into the erroneous belief that such representations were true and thereby causing it to purchase substantial quantities of his said product:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. James W. Cassedy for the Commission.

Mr. Henry Portnow, of New York City, for respondent.

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 Felix Portnow, an individual trading as M. Portnow, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows.

PARAGRAPH 1. Respondent, Felix Portnow, is an individual trading as M. Portnow, with his principal place of business located at 445 Grand Street, New York, N. Y. Respondent is now and for some months last past has been engaged in the manufacturing, advertising, and selling of trusses, which are devices used in the treatment of ruptures or hernias.

PAR. 2. In the course and conduct of his aforesaid business the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertising concerning his said device by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said device 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

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and by advertisements in newspapers and periodicals, are the following:

RUPTURED!

End Your Rupture Troubles with the Portnow Patented Wonder Truss

Prices \$3, \$5, and \$8

10 day free trial

PORTNOW'S TRUSSES

445, Grand St. New York

New York's Largest Truss Store

Member Jewish Workmen's Circle 32 Years.

RUPTURED FIND RUPTURE RELIEF

Every day we get reports from ruptured people that they have found sure rupture relief in Portnow's newly patented wonder truss. Today Mr. Gelb of the Bronx writes: "My rupture trouble is now over thanks to Portnow." M. Portnow, the well known truss expert and discoverer of the Wonder Truss, is a member of the Workmen's Circle for over 32 years. Portnow's is New York's largest truss store. 445 Grand st., New York. Portnow Patent U. S. Patent Office.

HERNIA

Marvelous New Belt Alleviates

Hernia Without Operation

\$3 \$5 \$8

Portnow Trusses

445 Grand st., N. Y. C.

Famous Hernia Specialist in

New York Since 1898

PAR. 3. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, respondent represents, directly and by implication, that the use of his device will end all rupture troubles and will furnish sure rupture relief and will furnish sure relief for all types and kinds of ruptures; that it is effective in the treatment of rupture or hernia and will provide relief without the intervention of surgical procedure; that said device is new in principle and design and is essentially different than other trusses; that respondent is a famous hernia specialist and has been known as such since 1898; that he has been a member of the Jewish Workmen's Circle for 32 years, and that he conducts the largest truss store in the city of New York.

PAR. 4. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact the use of respondent's device will not end rupture troubles and will not and cannot furnish relief for all types and kinds of rupture or hernia. Rupture or hernia is caused by congenital defects, weakness by trauma or following surgical intervention with resultant protrusion of an organ or part of

an organ or other structure through the wall of the cavity normally containing it. Ruptures or hernia are generally divided into two classes, reducible and irreducible. Respondent's device may help to hold a reducible hernia in place but many such hernias will not remain reduced under movement and internal pressure and will reappear even while respondent's device is being used. Said device will be of no value whatsoever in conditions of irreducible hernia. There is no external device, truss or belt which of itself will be effective in the treatment of any type of hernia and respondent's device will not provide relief from hernia, either temporary or permanent, and will not obviate the necessity of surgical procedure in order to obtain relief. Respondent's device is not new either in principle or design and is not essentially different than other trusses. Respondent is not a famous hernia specialist and cannot be called a specialist at all as the term is ordinarily known and understood. He has not been a member of the Jewish Workmen's Circle for 32 years or for any substantial portion of such time and does not conduct the largest truss store in New York City.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous or mistaken belief, to purchase substantial quantities of respondent's product.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair or deceptive acts and practices in commerce within the meaning and intent 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 the 20th day of January, 1943, issued and subsequently served its complaint in this proceeding upon the respondent, Felix Portnow, an individual trading as M. Portnow, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts executed by counsel for respondent and Richard P. Whiteley, assistant chief counsel for the Federal Trade

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Commission, subject to the approval of the Commission, might be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission might proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Respondent expressly waived the filing of a report upon the evidence by the trial examiner. Thereafter, this proceeding regularly came on for final hearing before the Commission on the complaint and stipulation, said stipulation having been approved, accepted and filed; and the Commission, having duly considered the same 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. The respondent, Felix Portnow, is an individual trading as M. Portnow, with his principal place of business located at 445 Grand St., N. Y. Respondent is now and for several years last past has been engaged in the manufacturing, advertising, and selling of trusses, which are devices used in the treatment of ruptures or hernias.

PAR. 2. In the course and conduct of his aforesaid business, the respondent has disseminated and has caused the dissemination of advertisements concerning his said device by the United States mails and by various other means in commerce as "commerce" is defined in the Federal Trade Commission Act; and respondent has also disseminated and has caused the dissemination of advertisements concerning his said device by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of his said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in said advertisements disseminated and caused to be disseminated by the respondent as hereinabove set forth by the United States mails and by advertisements in newspapers, are the following:

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RUPTURED!

End Your Rupture Troubles with
the Portnow Patented Wonder Truss

Prices \$3, \$5, and \$8

10 days free trial

PORTNOW'S TRUSSES

445 Grand St., New York

New York's Largest Truss Store

Member Jewish Workmen's Circle 32 Years

RUPTURED FIND RUPTURE RELIEF

Every day we get reports from ruptured people that they have found sure rupture relief in Portnow's newly patented wonder truss. Today Mr. Gelb of the Bronx writes: "My rupture trouble is now over thanks to Portnow." M. Portnow, the well known truss expert and discoverer of the Wonder Truss, is a member of the Workmen's Circle for over 32 years. Portnow's is New York's largest truss store. 445 Grand St., New York. Portnow Patent U. S. Patent Office.

HERNIA

Marvelous New Belt Alleviates

Hernia Without Operation

\$3 \$5 \$8

Portnow Trusses

445 Grand St., N. Y. C.

Famous Hernia Specialist in

New York Since 1898.

PAR. 3. Through the use of the aforesaid statements and representations hereinabove set forth, and other statements and representations similar thereto not specifically set out herein, respondent has represented, directly and by implication, that the use of his device will end all rupture troubles and will furnish sure rupture relief for all types and kinds of ruptures; that it is effective in the treatment of all types of rupture or hernia and will provide relief for all ruptures without the intervention of surgical procedure; that said device is new in principle or design and is essentially different from other trusses; that respondent is a famous hernia specialist known as such since 1898; that he has been a member of the Jewish Workmen's Circle for 32 years and that he conducts the largest truss store in the city of New York.

PAR. 4. The aforesaid statements and representations of the respondent are misleading and deceptive and constitute false advertisements in the following respects:

The use of respondent's device will not end all rupture troubles and will not and can not furnish relief for all types and kinds of rupture or hernia.

Ruptures or hernia is caused by congenital defects, weakness by trauma or following surgical intervention, with resultant protrusion of an organ or part of an organ or other structure through the wall of the cavity normally containing it.

Rupture or hernias are generally divided into two classes, reducible and irreducible.

There are several regions in the human body where hernia may occur, the following being examples: Inguinal (direct or indirect), femoral, umbilical, diaphragmatic, obturator, and ventral. The inguinal region is the most common site, with femoral and ventral hernias as the next most common types. Inguinal hernia is usually a giving way of the protective structures of the inguinal opening or rings, and only in case of extraordinary force, strains or trauma does there occur a "rip" or "tear" of these tissues.

Trusses, of which there are many types and forms, are devices designed to prevent the protrusion of the viscera through these abnormal openings. Inasmuch as the hernias have their individual characteristics as to size and sac content, these truss devices must be fitted and adjusted for each person.

Closure of the hernial opening and repair of the defect is not induced or accomplished by the wearing of a truss except that umbilical hernias in the new-born may be closed by nature, provided that a properly adjusted truss is applied before the infant is three to six months of age. With this last exception, no valid claim can be made that a truss will close these abnormal openings in the sense of bringing about an organic union of tissues. Closure can be accomplished only by means of a surgical operation.

Respondent's device may help to hold a reducible hernia in place, but some hernias will not remain reduced under movement and internal pressure and will reappear even while any truss is being used.

Respondent's device will be of no value whatsoever in conditions of irreducible hernia.

There is no external device, truss or belt of any kind which of itself will cure hernia.

Respondent's device of itself will not be effective in the treatment of any type of rupture or hernia and will not provide relief from hernia, either temporary or permanent, in the sense of being a cure, and will not obviate the necessity of surgical procedure in order to obtain relief.

Trusses are useful in furnishing temporary support to hernias, thereby relieving pain and discomfort temporarily in the average case. Also, there are certain cases of hernia in the aged, for instance, where operation would be inadvisable due to their being poor operative risks. In such cases, properly fitted trusses would be indicated.

The respondent's truss business was founded in 1898 by M. Portnow, respondent's father, who continued it until his retirement in 1940. Respondent worked for his father in this business for many years until his father's retirement, and subsequently, the respondent has conducted the business continuously to the present date.

Patents were issued by the United States Patent Office, June 4, 1940, and June 2, 1942, to Morris Portnow, the respondent's father, for improvements on truss devices in common use. The truss device involved in this case is manufactured by the respondent in accordance with these patents and is advertised and sold by respondent as heretofore set forth. While respondent's truss device is new in that it differs in construction, design, and in the use of material of which it is made, from other trusses in common use, it is not new in the sense that it operates in the control of rupture in a different manner or upon a different principle from other trusses in common use.

Respondent has devoted himself to and has made a study of the truss business during his entire business life. During this time he has personally designed, made, constructed, fitted and applied, and has likewise repaired and serviced a large number of trusses for cases of reducible hernias and ruptures. While respondent may appropriately be termed a "truss specialist" or "specialist in trusses," respondent is not a graduate in medicine or in surgery and therefore can not properly represent himself to be a hernia specialist. His said truss devices are made for reducible hernias only.

Respondent is not a member of the Jewish Workmen's Circle and has not been a member of this organization for 32 years, nor for any portion of such time. Respondent's father, M. Portnow, who founded this business, was and is in fact a member of this organization and has been a member thereof for over 32 years.

The respondent does not conduct the largest truss store in the city of New York.

PAR. 5. The use by respondent of the foregoing statements, representations and advertisements, disseminated as aforesaid, has had and now has the tendency and capacity to and does mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are

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true and causes and has caused a substantial portion of the purchasing public, by reason of such erroneous and mistaken belief, to purchase substantial quantities of respondent's product.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, are all to the prejudice and injury 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, and a stipulation as to the facts entered into between respondent herein and Richard P. Whiteley, assistant chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Felix Portnow, individually and trading as M. Portnow, or under any other name or names, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's device designated Portnow's Patented Wonder Truss, or any other device of substantially similar construction, or performing substantially similar functions, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

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

(a) That respondent's truss will end all rupture troubles or will furnish rupture relief for all types and kinds of ruptures.

(b) That respondent's truss will cure rupture in adults or is effective in the treatment of all types of rupture or hernia or will provide relief for all ruptures without the intervention of surgical procedure.

(c) That respondent's truss will be of any value whatsoever in conditions of irreducible hernia.

(d) That respondent's truss is new in the sense that it operates in the control of rupture in a different manner or upon a different principle from other trusses in common use.

(e) That respondent is a hernia specialist.

(f) That respondent is a member of the Jewish Workmen's Circle.

(g) That respondent conducts the largest truss store in the city of New York.

2. Disseminating or causing to be disseminated by any means any advertisement 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 respondent's device, which advertisement contains any representation prohibited in paragraph 1 hereof.

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

IN THE MATTER OF

WALTER ZULAWINSKI AND LOUISE ZULAWINSKI, TRADING AS ITALIAN ACCORDION MANUFACTURING COMPANY AND ITALIA & P. SOPRANI ACCORDION MANUFACTURING COMPANY

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

Docket 5330. Complaint, June 6, 1945—Decision, Feb. 28, 1946

Where two individuals engaged in the interstate sale and distribution of musical instruments, including new, reconditioned, and used accordions and concertinas; through advertisements in trade journals and magazines, circulars, letterheads, catalogs, and other advertising media, directly or by implication—

Represented that they had been accordion manufacturers since 1861; that their products were manufactured by Italia & P. Soprani Accordion Manufacturing Company; and that they were the manufacturers of the products they offered for sale and sold; had on hand all types and models of accordions; and gave prompt and satisfactory service on all orders for said instruments; The facts being that they had been engaged in the sale and distribution of accordions only since 1941; there was no such manufacturer of accordions as the aforesaid company; they did not own, operate, or control any plant or factory for the manufacture of their products, but were engaged in the sale and distribution of accordions and other musical instruments acquired from others; did not have on hand all types and models of accordions, and were not in position to give prompt attention, service or delivery on orders received by them; and in filling orders, they attempted to substitute items other than those requested, at a price different from that indicated in their advertising matter;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public, which has a marked preference for dealing directly with the manufacturer, in the erroneous belief that such representations were true, and thereby to induce it to purchase their said products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Law, Tate & Walsh, of Chicago, Ill., 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 Walter Zulawinski