

IN THE MATTER OF
**THE UNIVIS LENS COMPANY AND THE UNIVIS LENS
CORPORATION**

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

Docket 5351. Complaint, Apr. 22, 1946¹—Decision, Nov. 12, 1948

All bifocal lenses in common use today are based on the same general principle and consist of a spectacle lens for use in distance vision, into a portion of which there has been inserted a small lens segment designed to correct the vision for close work, and the question as to which of the various shapes and sizes of said reading segments is best adapted for any given individual depends upon a number of circumstances, one of the most important of which is the occupation or activity in which the individual is to engage when wearing the glasses.

Where a corporation engaged in the manufacture, sale, and distribution in commerce of its "Univis 2-Way Lenses" and "Univis 3-Way Lenses," together with its patent-owning and advertising subsidiary, in competition with others similarly engaged in the sale of multifocal lenses, including lenses in which the bifocal segments had rolled or rounded tops instead of the straight top made use of by said corporation and its subsidiary; through advertising statements and depictions in magazines and other publications—

- (a) Falsely represented that the user of spectacles made with round top reading segments must tilt his head and otherwise assume an unnatural, uncomfortable and conspicuous head position in order to read through said round top bifocals, whereas the user of their spectacles with the flat top reading segments, when reading, maintained his head in a natural, comfortable, and inconspicuous position;
- (b) Falsely represented that said competitive lenses caused distress, discomfort and eyestrain and gave the wearer an aged and conspicuous look, while the opposite was true of the user of spectacles made with their lenses; and
- (c) Falsely represented that in the round top bifocal lenses the line of demarcation between the reading segment and the distance vision segment was more conspicuous than the corresponding line in their straight top bifocals;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that their representations were true and into the purchase of substantial quantities of their lenses; whereby trade was unfairly diverted to them from their competitors and substantial injury was done to said competitors in the sale of their products in commerce:

Held, That such acts and practices, as above set forth, were all to the prejudice and injury of their competitors and constituted unfair methods of competition in commerce.

¹ Amended.

Before *Mr. Andrew B. Duvall*, trial examiner.

Mr. Clark Nichols for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., and *Smith, Schnacke & Compton*, of Dayton, Ohio, for respondents.

AMENDED 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 the Univis Lens Co., a corporation, and Univis Corp., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, the Univis Lens Co., is a corporation existing under the laws of the State of Ohio, and respondent, Univis Corp., is a corporation existing under the laws of the State of Delaware. The latter corporation is wholly owned subsidiary of the former. Both of said respondents have their principal place of business at 401 Leo Street, in Dayton, Ohio.

PAR. 2. Respondents are now, and for more than 1 year last past have been engaged in the sale and distribution of bifocal optical lenses. Among the lenses so sold and distributed are those designated as "Univis 2-Way Lenses" and "Univis 3-Way Lenses." Respondents cause said lenses, when sold, to be transported from their place of business in the State of Ohio to purchasers thereof located in the various States of the United States and in the District of Columbia.

Respondents at all times mentioned herein have maintained a course of trade in said lenses in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents have been and now are in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale of similar lenses, in commerce, designed for the same general uses and purposes as the lenses sold by the respondents and particularly with those engaged in the sale of lenses in which the bifocal segment has a round or rounded top.

PAR. 4. In the course and conduct of their said business, said respondents, in soliciting the sale of and in selling their said products in commerce, have adopted and followed, and now follow, a course of action designed to and having the effect of disparaging the products

of their competitors. In various forms of advertising matter, disseminated in commerce, respondents, by depictions and statements, purport to illustrate the difference between their lenses and those of their competitors. Such illustrations include depictions of persons wearing eyeglasses fitted with Univis lenses the reading segments of which have flat tops, and of persons wearing eyeglasses fitted with bifocal lenses having round top reading segments. In such depictions the heads of the wearers of the Univis lenses appear in a natural, comfortable position and having pleased expressions on their faces, while the heads of the wearers of bifocals having round top reading segments are tilted back in an unnatural and uncomfortable manner and their countenances appear distressed and eyes strained. In connection therewith statements such as "Conspicuous with aging round-seg bifocals" and "Inconspicuous. Still young with Univis 2-Way Lenses" appear. In many of such depictions the "Univis Lenses" show no dividing line between the reading segments and the remainder of the lenses and in certain advertisements the aforesaid depictions are followed by the statement "ROUND-TOP SEGMENT BIFOCALS—Unnatural—Uncomfortable—Conspicuous! UNIVIS 2-Way Lenses—Natural—Comfortable—Inconspicuous!"

PAR. 5. Through the use of the words, statements, and depictions appearing in the advertising matter aforesaid respondents represent that the user of glasses made up with competitive bifocal lenses with round top reading segments, must tilt his head and otherwise assume an unnatural and uncomfortable position in order to use such lenses to advantage and that the contrary is true as to a user of glasses made up with respondents' said lenses; that the use of said competitive lenses causes distress, discomfort, and eye strain and gives the wearer an aged and conspicuous look while the opposite is true with respect to the user of glasses made up with respondents' lenses; that in such competitive lenses the line of demarcation between the top of the reading segment and the distance segment is more conspicuous than the similar line in respondents' lenses and therefore less desirable.

PAR. 6. The representations and depictions, used and disseminated by respondents as aforesaid, are grossly exaggerated, false and misleading, and constitute disparagement of competitive products. In truth and in fact, all of the bifocal lenses in common use today, including the Univis bifocal lenses and the bifocal lenses distributed by competitors, are based on the same general principle and consist of a spectacle lens for use in distant vision, into a portion of which a smaller lens segment, designed to correct the wearer's vision for reading and other close work, has been cemented, fused, or ground. These

smaller reading segments are of various shapes and sizes and are located in various positions on the larger distance portion of the lens but usually in the lower half of the distance portion. Some of the reading segments are complete circles; others represent larger or smaller segments of a circle and are so placed on the complete lens that the upper part of the reading segment is round; in still other bifocal lenses the reading segment appears as a circle, the upper portion of which has been cut away. The Univis bifocal lens is of this latter type and in the Univis lens the top of the reading segment is straight.

Each of these various sizes and shapes of reading segments in bifocal lenses has its advantages, and the question as to which is best adapted for any given individual depends upon a number of circumstances, one of the most important of which is the occupation or activity in which the individual is to engage when wearing the bifocal glasses. Users of glasses with properly fitted and adapted bifocal lenses with round top reading segments are not required to tilt the head or to assume an unnatural or uncomfortable position in order to use such lenses to advantage in their customary and usual activities nor will the user of glasses with such lenses suffer distress, discomfort, or eye strain. The same is true with respect to those individuals whose optical needs can be met by the use of glasses with Univis bifocal lenses. The appearance of users of properly fitted and designed bifocal lenses with round top reading segments, insofar as an indication of age or conspicuousness is concerned, is no different than when respondents' lenses are used.

The line of demarcation between the top of the round top reading segment and the distance segment in competitive lenses is not more conspicuous than the similar line in respondents' lenses and is not less desirable from that standpoint.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, and depictions, has had and now has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements, representations, and depictions are true and into the purchase of substantial quantities of respondents' lenses, in commerce, in preference to the lenses sold by their competitors in commerce. As a result thereof, trade has been unfairly diverted to the respondents from their competitors. In consequence thereof, substantial injury has been and is being done to respondents' competitors in commerce.

Findings

45 F. T. C.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce and 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 July 3, 1945, issued and subsequently served on the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. On August 30, 1945, the respondents filed their joint answer to said complaint, in which they admitted in part and denied in part the allegations thereof. Richard P. Whiteley, assistant chief counsel of the Commission, having thereafter moved the Commission to issue an amended complaint against said respondents, the Commission on April 22, 1946, issued and, on April 25, 1946, served on the respondents its amended complaint, charging said respondents with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act. On May 14, 1946, the respondents filed their joint answer to said amended complaint, admitting in part and denying in part the allegations thereof.

A trial examiner of the Commission was thereafter designated by the Commission to take testimony and receive evidence in support of and in opposition to the allegations of the amended complaint, and on May 19, 1947, a hearing was convened in Dayton, Ohio, for this purpose. The respondents, by their counsel, appeared at said hearing and requested permission to withdraw their previously filed answer to the amended complaint and to file in lieu thereof an amended answer in which they would admit, with certain minor exceptions, all of the material allegations of said amended complaint, and this request was granted and the amended answer was accordingly received and filed.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the amended complaint, the respondents' amended answer thereto, certain testimony and other evidence taken before the trial examiner, the trial examiner's recommended decision and brief of counsel in support of the complaint (counsel for the respondents having filed no brief and no request for oral argument hav-

ing been made); and the Commission, having fully 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. The respondent, the Univis Lens Co., is a corporation organized and existing under the laws of the State of Ohio, with its principal place of business located at 401 Leo Street, in Dayton, Ohio.

The respondent, the Univis Corp., is a corporation organized and existing under the laws of the State of Delaware with its principal place of business also located at 401 Leo Street, in Dayton, Ohio. This respondent is a wholly owned subsidiary of and has the same officers, at least in part, as respondent the Univis Lens Co.

PAR. 2. The Univis Lens Co. is now, and for a number of years last past has been, engaged in the manufacture and in the sale and distribution of multifocal spectacle lenses. Prior to 1945 the Univis Corp. was also so engaged, but since that time this corporation has not actually conducted any of the manufacturing or selling operations in connection with the business. It does hold in its own name certain patent rights, however, which are used by the Univis Lens Co. in the manufacture of its lenses, receiving royalties from the Univis Lens Co. on sales of products manufactured in accordance with these patents, and it does carry on advertising activities in promoting the sale of the lenses manufactured by the parent corporation.

Among the lenses manufactured and sold by the Univis Lens Co. are those designated as "Univis 2-Way Lenses" and "Univis 3-Way Lenses." These products, when sold, are transported from the respondent's place of business in Dayton, Ohio, to the purchasers thereof located in the various States of the United States other than Ohio and in the District of Columbia. Both respondents prior to 1945 maintained, and respondent the Univis Lens Co. since 1945 has continued to maintain, a constant course of trade in said lenses in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, the respondents have been and are now in substantial competition with other corporations and with firms, partnerships and individuals also engaged in the sale of multifocal lenses, in commerce, designed for the same general uses and purposes as the lenses sold by the Univis Lens Co. Among such competitors of the respondents are those engaged in

the sale of lenses in which the bifocal segments thereof have round or rounded tops.

PAR. 4. In soliciting the sale of and selling their products in commerce, the respondents have disseminated advertising matter in magazines and other publications through the United States mails, and otherwise, by depictions and statements purporting to illustrate the difference between their lenses and those of their competitors. Such illustrations have included depictions of persons wearing eyeglasses fitted with Unavis bifocal lenses, the reading segments of which have flat tops, and of persons wearing eyeglasses fitted with bifocal lenses having round top reading segments. In such depictions the heads of the wearers of the Unavis lenses have appeared in a natural and comfortable position, with pleased expressions on their faces, while the heads of the wearers of bifocals having round top reading segments have been tilted back in an unnatural and uncomfortable manner and their countenances have appeared distressed and their eyes strained. In printed matter near said pictures, statements have appeared as follows:

Conspicuous with aging, round-seg. bifocals.

Inconspicuous. Still young with Unavis 2-Way Lenses.

ROUND TOP SEGMENT BIFOCALS—Unnatural—Uncomfortable—Conspicuous!

UNIVIS 2-WAY LENSES—Natural—Comfortable—Inconspicuous.

In many of such depictions the Unavis lenses have showed no dividing line between the reading segments and the distance vision segments.

PAR. 5. Through the use of the words, statements, and depictions appearing in such advertising matter, the respondents have represented that the user of spectacles made with round-top reading segments must tilt his head and otherwise assume an unnatural, uncomfortable, and conspicuous head position in order to read through said round top bifocals, whereas the user of respondents' spectacles with the flat top reading segments, when reading, maintains his head in a natural, comfortable, and inconspicuous position; that said competitive lenses cause distress, discomfort, and eyestrain and give the wearer an aged and conspicuous look, while the opposite is true of the user of spectacles made up with the respondents' lenses; and that in the round-top bifocal lenses the line of demarcation between the reading segment and the distance vision segment is more conspicuous than the corresponding line in the Unavis straight top bifocals.

PAR. 6. The facts are that all of the bifocal lenses in common use today, including the Unavis bifocal lenses and the bifocal lenses distributed by the respondents' competitors, are based on the same general

principle and consists of a spectacle lens for use in distance vision, into a portion of which a small lens segment, designed to correct the wearer's vision for reading and other close work, has been cemented, fused, or ground. These smaller reading segments are of various shapes and sizes and are located in various portions on the larger, distance, portions of the lens, but usually on the lower half of the distance portion. Some of the reading segments are complete circles; others represent larger or small segments of a circle and are so placed on the complete lens that the upper part of the reading segment is round; in still other bifocal lenses the reading segment appears as a circle, the upper portion of which has been cut away. The Univis bifocal lens is of this latter type, and in the Univis lens the top of the reading segment is straight. Each of these various sizes and shapes of reading segments in bifocal lenses has its advantages, and the question as to which is best adapted for any given individual depends upon a number of circumstances, one of the most important of which is the occupation or activity in which the individual is to engage when wearing the bifocal glasses.

PAR. 7. Users of round-top reading segments are not required to tilt their heads or to assume unnatural or uncomfortable positions in order to use such lenses to advantage in their customary and usual activities, nor will the users of glasses with such lenses suffer distress, discomfort, or eyestrain. The same is true with respect to those individuals whose optical needs can be met by the use of glasses with Univis bifocal lenses. The appearance of users of properly fitted and designed bifocal lenses with round-top reading segments, insofar as an indication of age or conspicuousness is concerned, is no different than when respondents' lenses are used.

PAR. 8. The lens of demarcation between the tops of the round-top reading segments and the distance segments in competitive lenses are not more conspicuous than the corresponding lines in respondents' lenses and such competitive lenses are not less desirable from that standpoint.

PAR. 9. The Commission therefore finds that the statements and representations made by the respondents as aforesaid were misleading and deceptive.

PAR. 10. The use by the respondents of said false and deceptive statements and representations has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the respondents' representations were true and into the purchase of substantial quantities of the respondents' lenses. As a result thereof, trade has been unfairly diverted to the respondents from their competitors, and substantial in-

jury had been done to the respondents' competitors in the sale of their products in commerce.

CONCLUSION

The acts and practices of the respondents, the Univis Lens Co. and the Univis Corp., as herein found, were all to the prejudice and injury of the public and of the respondents' competitors and constituted unfair methods of competition 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 amended complaint of the Commission, the respondents' amended answer thereto, testimony, and other evidence in support of and in opposition to the amended complaint taken before a trial examiner of the Commission theretofore duly designated by it, and trial examiner's recommended decision, and brief of counsel in support of the amended complaint (no brief having been filed on behalf of the respondents and no request for oral argument having been made); and the Commission, having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act:

It is ordered, That the corporate respondents, the Univis Lens Co., and the Univis Corp., and their respective officers, agents, representatives, and employees, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of multifocal spectacle lenses, do forthwith cease and desist from:

1. Representing, by picturizations or otherwise, that the user of bifocal lenses with round-top reading segments must tilt his head and otherwise assume an unnatural and uncomfortable position in order to use such lenses to advantage.
2. Representing, directly or by implication, that round-top reading segments of bifocal lenses cause distress, discomfort, or eyestrain.
3. Representing, directly or by implication, that the lines of demarcation between the tops of the reading segments and the distance segments in round-top bifocals are more conspicuous than the corresponding lines in the respondent's flat-top bifocal lenses.

It is further ordered, That the respondents shall, within 60 days after 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.

Syllabus

IN THE MATTER OF

BEN BRAUDE TRADING AS SALES STIMULATORS

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

Docket 4982. Complaint, June 21, 1943—Decision, Nov. 18, 1948

Where the words "Lady Esther" had been used continuously since 1915 by a company thus named and by its predecessor in interest as a trade-mark for cosmetic and related products made and sold by it; said words had been registered for such purpose in 1921 and said company had spent \$18,000,000 in advertising its products between January 1, 1922, and June 1944; products bearing said trade-mark "Lady Esther" had been known and described for many years as the products of the company above referred to; and said products, distributed over the entire United States, enjoyed a wide and favorable reputation among the members of the purchasing public and were recognized as products of superior quality and performance; and

Thereafter an individual engaged since 1916 in the wholesale jewelry business, and since about 1927 in the interstate sale and distribution of its "Sales Stimulator Plan," which consisted of advertising circulars, display cards, other literature, and punch cards, and sets of tableware for use as premium merchandise in connection with the operation of the plan, which he sold to jobbers and retailers, including, principally, grocers, gasoline filling station operators, and similar small-business men, and under which their respective customers became entitled, after purchases aggregating \$5, as evidenced by the punch cards given them, to receive a six-piece set of said individual's tableware:

- (a) Made use, since 1935, of the words "Lady Esther"—which he later registered—as a brand name or trade-mark for his said tableware, causing the words "Lady Esther silverplate" to be stamped on the individual articles thereof from 1935 to 1940, and, in 1940 and 1941, making use of the words "Lady Esther Design Silverplate" and
- (b) Made use of the aforesaid words in his circulars and other advertising literature distributed among the purchasing public and the jobbers, wholesalers, and retailers for distribution by them to the public through such statements as "FREE FAMOUS LADY ESTHER SILVERWARE GUARANTEED FOR 15 YEARS. Ask us how to get it." LADY ESTHER SILVERWARE CAMPAIGN GUARANTEE LADY ESTHER SILVERWARE PLATE. Each Silverware Piece Stamped LADY ESTHER is hereby GUARANTEED to Give Satisfactory Service * * * Get this Beautiful LADY ESTHER Design SILVERWARE SET GUARANTEED", etc.;

Notwithstanding the fact neither said plan nor tableware were the plan or the product of said company; said ware was neither made nor guaranteed by it; there was no connection whatever between said individual or his business and that of said company; his tableware was not of the quality and did not give the performance which the purchasing public ordinarily expected to