

IN THE MATTER OF

THE DOBBS TRUSS COMPANY, INC. 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 5808. Complaint, Sept. 11, 1950—Decision, Apr. 3, 1952

Where a corporate manufacturer of the Dobbs patented truss, engaged in the interstate sale thereof to distributors in numerous cities throughout the country, to whom it issued exclusive territorial franchises and furnished with advertising mats with a request that they use them so as to make the advertising nationally uniform and at the same time satisfactory to the Commission (which had requested said corporation to submit specimens of its advertising); together with most of its said distributors—

- (a) Represented by implication, through circulars reprinting a newspaper story published in a Birmingham paper, which described the history of the device and stated that its inventor, the founder of the corporation here concerned, "*was cured*", that the said device would cure the rupture of the reader;

The facts being that no truss, appliance or device can do anything for irreducible hernia, and that reducible hernia can only be cured by surgery; and

Where said corporation and four officers thereof—

- (b) Falsely represented through newspaper advertisements that the device in question kept a rupture tightly closed at all times, while its wearer was working, lifting, walking, or swimming;

The facts being that to close a reducible rupture means to close the aperture through which it has protruded anatomically, and not merely to hold the protrusion in; and

Where said corporation and most of its said distributors—

- (c) Represented that their advice (1) would not hinder circulation of the blood, did away with all chafing, rubbing, irritation, binding, slipping, and constricting pressure; (2) would "help nature help you"; and (3) might be worn with complete security and comfort;

The facts being that the aforesaid representations were false as to nonreducible rupture and were false as to reducible rupture with regard to the claim that it would not hinder circulation of the blood and would "help nature help you";

- (d) Represented that their device was a marvelous invention for rupture treatment; that it did not spread or strut the rupture, and that with it the wearer got maximum relief;

The facts being that said representations were false as to nonreducible rupture; and

Where its distributors, for whose advertising, insofar as it was not based on the mats and circulars disseminated by it, it was not responsible; variously—

- (e) Falsely represented that said device would hold the abdominal muscles together; would free the wearer of his rupture completely and permanently; would not slow up the circulation of the blood or exert any constricting pressure; and would correct a hernia and restore the muscles to their original state;

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- (f) Falsely represented that said device would draw the opening of the rupture together, keep the rupture tightly closed at all times, help nature strengthen muscles and tissues, and give nature a chance to repair the rupture; and
- (g) Represented that said device would control a hernia, would not enlarge a rupture, would permit complete freedom of bodily movement without displacement of the truss pad, and would do away with all chafing or binding and would not spread muscles;

When said representations were false as applied to non-reducible hernia or rupture;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby to induce it to purchase the said device:

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

Respondents' claim that the truss in question was different from and superior to other trusses, challenged by the complaint, was not found upon consideration of the evidence to have been shown as false or misleading, notwithstanding substantial and credible medical opinion that the device was no different from or superior to other trusses in the sense that the principle of all trusses is the same—to keep the protrusion in—since there are different means of accomplishing a given end, as may be illustrated by the old-fashioned wooden leg and the modern artificial one, both of which have the same function.

As respects the challenged claim that respondents' device did not bind, chafe, rub, irritate or slip, the evidence did not sustain the falsity of said claim as applied to non-reducible ruptures, and as reasonably understood by readers.

In considering the challenged claim that the device was a marvelous invention for rupture treatment, the word "marvelous" was found to constitute simply descriptive puffing. Considered further, the device was patented and therefore had some *prima facie* novelty, and it was found, on the basis of the evidence, that the device was an invention and that the representation that it was a treatment for rupture was not false as applied to reducible rupture.

Other challenged representations which were weighed in the light of the evidence and found not to have been shown as false or misleading when not applied to non-reducible rupture, included claims that the device would control a hernia; would not enlarge a rupture; would permit complete freedom of bodily movement without displacement of the truss pad; would do away with all chafing, binding, irritation or slipping; would not spread muscles or strut or enlarge the rupture; would give relief; and would control a hernia.

In considering the various claims of respondents as hereinabove set out, the Commission weighed the testimony and evidence applicable, including that of the medical experts and that of the lay witnesses, and, as applied to the question as to whether the device was both secure and comfortable, and the testimony of users that it was, accepted that of the users, since "actual usage on such a point is superior in weight to opinion, no matter how distinguished and extensive the general background thereof."

As to the challenged claim that respondents' device gave maximum effective relief, the Commission took the words "maximum" and "effective" as simply

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descriptive "puffing," and found that the device did give the relief advertised to those with reducible rupture in the sense of the only definition appearing in the record.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Taylor, Higgins, Windham & Purdue, of Birmingham, Ala., for respondents.

COMPLAINT¹

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 corporations, officials, and individuals named in the caption hereof, 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. Respondent The Dobbs Truss Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Alabama with its office and principal place of business located at 753 Lomb Boulevard, S. W., Birmingham, Alabama.

Respondents Homer C. Dobbs, J. Wood Dobbs and Gladys W. Clark are president, vice-president, secretary and treasurer, respectively, of corporate respondent The Dobbs Truss Company, Inc.

Respondent Ellie H. Vines, Sr., is an individual trading as Dobbs Truss and Appliance Company with his office and principal place of business located at 1725 Third Avenue, North, Birmingham, Alabama.

Respondent Clarence L. Clark is an individual trading as Dobbs

¹ The Commission on November 1, 1950, issued an order adding party respondent, as follows:

This matter coming before the Commission upon the request of the attorney supporting the complaint to add O. C. Dobbs, Jr., individually and as an officer of the Dobbs Truss Company, Inc., pursuant to the recital set out in the answer filed herein, and the Commission having duly considered the matter and the request herein, and being now fully advised in the premises:

It is ordered, That the complaint be amended by adding O. C. Dobbs, Jr., individually and as an officer of the Dobbs Truss Company, Inc., as a respondent and that such other grammatical corrections be made in the complaint as may be necessary by such action.

The Commission on February 8, 1951, issued an order adding party respondent, as follows:

This matter coming before the Commission upon the motion of the attorney supporting the complaint to add Dobbs Truss Sales Company, Inc., as a party respondent pursuant to the recital set out in said motion, and the Commission having duly considered the matter and the motion herein, and being now fully advised in the premises;

It is ordered, That the complaint be amended by adding Dobbs Truss Sales Company, Inc., as a respondent and that such other grammatical corrections be made in the complaint as may be necessary by such action.

Truss Appliance Company with his office and principal place of business located at 205 Whitehall St. S. W. Atlanta, Georgia.

Respondent Vic L. Brandon is an individual trading under his own name with his office and principal place of business located at 623 North Quincy Street, Clinton, Illinois.

Respondent Lemuel S. Dobbs is an individual trading as Dobbs Truss Company with his office and principal place of business located at 83 South High Street, Columbus, Ohio.

Respondent Scott C. McClelland is an individual trading as Dobbs Truss Distributing Company with his office and principal place of business located at 631 Maison-Blanche Building, New Orleans, Louisiana.

Respondent Dobbs Truss Company of New York, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York with its office and principal place of business located at 1475 Broadway, New York, N. Y.

Respondents Edward Nolin, Rose Nolin and Rosamond Nolin are officers of respondent Dobbs Truss Company of New York, Inc., with their office and principal place of business located at the same address.

Respondent Edward Nolin, with his New York office located at 1475 Broadway, New York, N. Y., also trades under the names of Dobbs Truss Company, Chicago, Illinois, Dobbs Truss Company, Los Angeles, California, Dobbs Truss Company, Boston, Massachusetts, and Dobbs Truss Company, Philadelphia, Pennsylvania.

Respondent Irvin O. Taylor is an individual trading as The Dobbs Truss with his office and principal place of business located at 541 Virginia Drive, Orlando, Florida.

Respondents William L. Powell and Ed. F. Hill are individuals and copartners trading as The Dobbs Truss Distributing Company, with their office and principal place of business located at 705 Olive Street, St. Louis, Missouri.

Respondent John C. Dobbs is an individual trading as Dobbs Truss Company, with his offices and principal place of business located at 1122 Market Street, San Francisco, California, and also trading as Dobbs Truss Sales Company of the Western States with its office and principal place of business located at 577 14th Street, Oakland, California.

Respondent George R. Gardner is an individual trading as Dobbs Truss Co., with his office and principal place of business located at 866 Spitzer Building, Toledo, Ohio.

Respondent Henry J. Watkins, Jr., is an individual trading as The Dobbs Truss Distributing Company with his office and principal place of business located at 913 Woodward Building, Washington, D. C.

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The individuals named as officers of the aforesaid corporations formulated, directed and controlled the policies, acts and practices of the respective corporations with which they were and are connected.

PAR. 2. Respondents are now, and for more than one year last past, have been engaged in selling and distributing a device, as "device" is defined in the Federal Trade Commission Act. Said device is designated as "Dobbs Truss."

PAR. 3. Respondents cause and have caused the said device, when sold, to be transported from their various places of business designated in Paragraph One hereof to purchasers located at various other States of the United States and in the District of Columbia, and at all times mentioned herein maintain and have maintained a course of trade in the said device in commerce among and between the various States of the United States and in the District of Columbia. Their volume of business in such commerce is substantial.

PAR. 4. Respondent, The Dobbs Truss Company, Inc., of Birmingham, Alabama, was founded by O. C. Dobbs about ten years ago. Said corporate respondent is engaged primarily in the manufacture and sale of the Dobbs Truss. The corporation issues franchises to its distributors for certain territorial rights and sells its products to them wholesale. It furnishes its distributors with advertising folders and with mats for suggested newspaper advertisements, many or all of which are used by said distributors. Said respondent advertises that it has offices in every large city in the United States. It allows its distributors to use its name, Dobbs Truss Company, in their corporate or trading capacity. By reason of the aforesaid and other facts, the various distributors are the agents of the Dobbs Truss Company, Inc., in the advertising and selling of said device.

PAR. 5. In the course of conduct of their business, respondents subsequent to March 31, 1938, disseminated and caused the dissemination of certain advertisements concerning said device by the United States mails and by various means in commerce, as commerce is defined in the Federal Trade Commission Act, including but not limited to advertisements in various newspapers and magazines hereinafter designated and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce the purchase of said device; and respondents have disseminated and caused the dissemination of advertisements concerning said device; including but not limited to the advertisements referred to above for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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PAR. 6. Among and typical, but not all inclusive, of the advertisements disseminated by the various respondents are the following which, for convenience and in order to avoid duplication, are numbered and the advertisements alleged to have been disseminated by each respondent are hereinafter referred to by such numbers.

(1) BIRMINGHAM MINISTER'S INVENTION BASIS FOR BIG INTERNATIONAL TRADE

O. C. Dobbs—and his 10 children have company offices in every large city in the United States * * *

Dobbs Truss is being worn in many lands * * * and here in the United States, it is fairly well known that the Dobbs Truss Company has an office in every large city.

How Mr. Dobbs * * * came to invent the Dobbs truss sounds much like the testimonials the company receives from time to time * * *.

For his lower abdominal rupture, he relates, he had tried everything—surgery, “other trusses” and, at the time he thought up the Dobbs truss, he was taking “lying-in-bed” treatment.

“But after three days,” he says, “I just couldn't lie in that bed any longer.” * * * From a junk pile he got an automobile seat spring and a discarded tire casing. With these he fashioned the first model of the present day Dobbs truss * * * Professing no prior knack for “making things,” he says that in his case it was simply the old tenet that “necessity is the mother of invention.”

HE WAS CURED

Within six months, he claims, he was able to return the parts to the junk pile, “a cured man.”

(Disseminated by means of a circular designated “newspaper in Birmingham reports interesting story concerning Dobbs truss.”)

(2) Is your RUPTURE getting worse each year? Then you must be wearing the wrong type of truss * * * See the DOBBS TRUSS * * * Keeps rupture tightly closed at all time while working, lifting, walking or swimming. Lightweight. Reason should teach you not to place a bulb or ball in opening of rupture which keeps muscles spread apart. Holds like the palm of your hand.

No matter what truss you now wear, you owe it to yourself to come see the DOBBS TRUSS.

Free Examination and Demonstration by Mr. Dobbs, son of inventor, who comes here direct from factory, Birmingham, Alabama, FRANCIS HOTEL.

(Disseminated by advertisement in Monroe, La., Morning World, February 13, 1949 issue.)

(3) * * * This marvelous invention for rupture treatment is *different* from any truss you have ever tried. . . .

The Dobbs Truss is different and far superior to the old fashioned truss . . . Do not hinder the circulation of the blood by wearing a constricting band around the body.

* * * does away with all chafing, binding, rubbing and all constricting pressure * * *.

* * * The DOBBS TRUSS has no bulbs or knobs to push into and irritate the ruptured opening * * *

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* * * swivel joint permits the body to move about freely in any direction without displacing the pad. In the bath, swimming, crawling, stooping, walking—the Dobbs Truss exerts the same even, protective pressure and may be worn with complete security and comfort * * *

* * * If you are wearing an old style truss, with but little or no benefits, give the modern Dobbs Truss a trial.

* * * will help Nature help you * * *

(Disseminated by means of circular designated “Dobbs Truss” bearing a picture of “O. C. Dobbs, inventor.”)

(4) No bulk to spread weak muscles.

(5) RUPTURED? Sure, you can get Relief with the New Dobbs Truss * * * Why, man! Rupture doesn't stop me! * * * no bulb to spread the rupture * * * maximum relief * * *.

(6) RUPTURED? Enjoy Life Again with a Comfortable DOBBS TRUSS * * * Stop suffering from reducible rupture! * * * No bulk to spread or strut the rupture * * * maximum relief * * *.

(7) Reason should teach you not to spread rupture with a ball or bulb.

(8) RUPTURED? *Stop suffering.* * * * maximum relief * * *.

(9) RUPTURED? Real Relief with Dobbs Truss * * *.

(10) *Don't let rupture stop you!* For relief, wear Dobbs Truss * * *.

(11) Comfortable relief * * *.

(Disseminated by means of mats furnished distributors.)

(12) RUPTURE needs the most modern scientific appliance for relief. Don't put on a truss which does not comply with modern science * * *.

(13) RUPTURED? The DOBBS TRUSS is different. It does not spread the rupture. It holds with a soft concave pad. No rubs, belts, or straps * * *.

(Disseminated by means of newspaper advertisements circulated in Missouri, Tennessee and Alabama.)

(14) RUPTURED? Sure, you can get Relief with the New DOBBS TRUSS. Why, man! Rupture doesn't stop me. * * * no bulb to spread the rupture. * * * Get maximum relief—.

(15) RUPTURED? Stop Suffering. Wear a DOBBS TRUSS. Don't let rupture stop you. For relief wear a Dobbs Truss.

(Disseminated by newspaper advertisements in Georgia, South Carolina, and Tennessee.)

(16) RUPTURED? See this new DOBBS TRUSS. It holds muscles with a soft concave pad. Light weight, touches body in but two places. Reason should teach you not to place a bulb or ball in opening of rupture, which keeps muscles spread apart. * * * It does not slip.

(Disseminated by advertisements in the Tecumseh Chieftain, Tecumseh, Nebraska, January 22, 1948, issue; Butler County Press, David City, Nebraska, January 15, 1948; Atkinson, Nebraska “Graphic,” January 30, 1948.)

(17) Keep Healthy. The proper control of a hernia is most important to your health. CORRECTIVE MEASURES. Restore the muscles to their original

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state * * * This swivel joint permits the body to move about freely in any direction without displacing the pad * * *. Walking, crawling, stooping or swimming. * * * does away with all chafing, binding and constricting pressure that slows up the circulation of the blood which is essential to a healthy body. Should a rupture return after an operation a DOBBS TRUSS should be worn for six months; watch results before having a second operation. An egg-shaped pad acts as a dilating wedge which stretches the muscles and tissues, causing the opening to enlarge.

(Disseminated by means of a circular designated "The Dobbs Truss".)

(18) RUPTURED? Would you like to be free of your rupture and kept so—100%—for balance of your life without further expense, worry or trouble? then wear THE DOBBS TRUSS. The basic design and the application of the DOBBS SLIGHTLY-CUPPED PAD TRUSS has proved both useful and practical to the mutual satisfaction of the medical profession and the people who wear them. The Dobbs Truss holds just like the hand.

(Disseminated by ad in The Columbus Dispatch of October 27, 1948.)

(19) RUPTURED? Many, even elderly men, report correction in just a few months with—The Dobbs X-Ray Tested Truss * * * It holds like the palm of your hand. Your rupture can be enlarged by an egg-shaped pad, but you CANNOT enlarge it with pressure of the palm of your hand. The Dobbs Truss is just that simple and effective!

(Disseminated in the Columbus Citizen, Columbus, Ohio, February 6, 1949, March 6–20, April 3, 1949, issues.)

(20) RUPTURED, DOBBS TRUSS—No Bulbs, No Belts, No Straps. It holds like the hand. It can be worn while bathing. It does not strut the rupture. It holds with a concave pad. Reason should teach you not to place a bulb or ball in opening of rupture, thus keeping the muscles spread apart.

(Advertisement in The Times Picayune, May 9, 1949, issue.)

(21) RUPTURED? Get amazing efficient relief with Dobbs Truss.

(Advertisement disseminated in Sunday News, New York, February 9, 1947 issue.)

(22) Reason should teach you not to place a bulb or ball in opening of rupture which keeps muscles spread apart.

(Disseminated by advertisement in Chicago Tribune, May 25, 1947, issue.)

(23) Do not hinder the circulation of your blood by wearing a constricting band around the body.

(Disseminated in the Chicago Tribune, June 24, 1947, issue.)

(24) Cannot slip. Keeps rupture tightly closed at all times—while working, lifting, walking, or swimming.

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(Disseminated by means of circular designated "The Dobbs Truss".)

(25) RUPTURED? Get relief with Dobbs Truss. Reason should teach you not to spread rupture with a ball or bulb. Dobbs Truss uses a patented concave pad that supports like your hand * * *.

(Disseminated by advertisement in the Times, Chicago, March 30, 1947, issue.)

(26) RUPTURED? Get amazing effective relief with Dobbs Truss.

(Disseminated by advertisement in Chicago Sun, January 12, 1947, issue.)

(27) RUPTURED? Improved patented Dobbs Truss. It holds the muscles together with soft, concave pad. Keeps rupture tightly closed at all times—while working, lifting, walking or swimming. * * * Cannot slip. Do not hinder the circulation of your blood by wearing a constricting band around the body.

(Disseminated in the Chicago Daily News, September 3, 1946.)

(28) RUPTURED? Ruptured persons who have been delaying treatment are those wearing unsatisfactory trusses. Investigate this most unusual of all trusses, the bulbless, beltless, strapless Dobbs Truss. Its patented concave pad is designed to hold exactly like your hand—automatically adjusts itself to every position—unlike the old-style trusses with fixed, screwed-on, rounded pads. It will not force the muscles further apart enlarging the rupture but gently draws the rupture opening together giving nature a chance to repair.

(Disseminated by advertisement in Orlando Evening Star, Orlando, Florida, December 15, 1948, and by advertisement in Orlando Morning Sentinel, December 16, 1948.)

(29) RUPTURED The New Dobbs Truss is different * * * No pinching, bind, slipping or chafing * * *.

(Disseminated by means of advertisement in the Evening Star, Orlando, Florida, May 12, 1948.)

(30) If your need for a truss is greater this year than last, your truss is not giving you the proper results * * * Dobbs Truss * * * free body action.

(Disseminated by advertisement in St. Louis Post Dispatch, March 21, 1948, issue, and February 15, 1948, issue; and in the Globe Democrat, St. Louis, February 15, 1948, issue.)

(31) RUPTURED? Wear a Dobbs Truss * * *. The Dobbs truss is different from any other truss * * * keeps the rupture closed. Does not hinder circulation. Does not slip up or down. Stays where placed. Why continue to rupture yourself by wearing bulbs and convex pads which spread the muscles further apart. Why not hold your rupture like you do when you hold it in your hand. Stop suffering. Comfortable relief from Dobbs Truss.

(Disseminated by advertisement in Sunday Star News, Wilmington, North Carolina, February 2, 1947, issue.)

(32) RUPTURED? Dobbs Truss . . . Bulbless. Beltless. Strapless. Holds the muscles in place with a soft concave pad. Nature teaches you not to place a ball or bulb in rupture opening, thus spreading weakened muscles apart.

(Disseminated by advertisement in San Francisco Examiner, April 3, 1949, issue.)

(33) RUPTURED? Improved patented Dobbs Truss CANNOT slip. Holds muscles together * * * keeps rupture tightly closed at all times . . . while lifting, walking or swimming * * * Reason should teach you not to place a bulb or ball in opening of rupture which keeps muscles spread apart.

(Disseminated by advertisement in the San Francisco Examiner, April 10, 1949, April 24, 1949, May 1, 1949; in the Oakland Tribune, April 1949, and in the Sunday Examiner, Oakland, California, 1949.)

(34) Is your rupture getting worse each year? Then you must be wearing the wrong type of truss, perhaps one with a knob * * * Dobbs Truss * * * keeps rupture tightly closed at all times, while working, lifting, walking or swimming. * * * Reason should teach you not to place a bulb or ball in opening of rupture which keeps muscles spread apart. Holds like the palm of your hand.

(Disseminated by means of advertising in the Oakland, California, Post Examiner, September 14, 1948.)

Holds muscles in place * * * Nature teaches you not to place a ball or bulb in rupture opening, thus spreading weakened muscles apart * * * holds like your hand * * *.

(Disseminated in advertisement in the San Francisco Chronicle, July 11, 1948, and August 29, 1948.)

(36) If ruptured * * * wear a Dobbs Truss * * * It's Different. Has a concave pad that holds like your hand. No bulbs spread weak muscles * * * No matter what type truss you are now wearing, you owe yourself a free demonstration of this simple, effective instrument.

(Disseminated by means of Circular styled "The Dobbs Truss".)

(37) Reason should teach you not to place a bulb or ball in opening of rupture, thus keeping the muscles apart. RUPTURED? The Dobbs Truss is different. Worry less. * * * Common sense should teach us not to place a bulb or ball in opening of the rupture, thus separating the muscles * * *.

(Disseminated by advertisements in Washington, D. C., and Richmond, Virginia, papers in 1948.)

(38) * * * This marvelous invention for rupture treatment is different from any truss you have ever tried. The Dobbs Truss is different and far superior to the old-fashioned truss because of these important features: (1) The Dobbs Truss has no straps and no belts. By eliminating straps and web belts, the Dobbs Truss does away with all chafing, binding, rubbing and all constricting pressure. It touches the body in two places only. (2) The Dobbs Truss has no bulbs or knobs to push into and irritate the ruptured opening * * * The Dobbs Truss is more durable than old-fashioned trusses since there is no elastic webbing or straps to deteriorate or not.

(Disseminated by means of Circular "The Dobbs Truss," G. R. Gardner, 866 Spitzer Building, Toledo, Ohio.)

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(39) RUPTURED, reason should tell you that a ball or bulb pressing into the opening acts as a wedge spreading apart the already weakened muscles and tissues. Patented Dobbs Truss. * * * Helps nature to strengthen the muscles and tissues. Reason should tell you a ball or bulb acts as a wedge forcing itself into the opening, keeping muscles and tissues spread apart.

(Disseminated by advertisements in Ashland, Ohio; Toledo, Ohio, and other Ohio papers in 1949.)

(40) The Dobbs Truss has no straps and no bands. By eliminating straps and web belts, the Dobbs Truss does away with all chafing, binding, rubbing and all constricting pressure.

The Dobbs Truss has no bulbs or knobs to push into and irritate the ruptured opening.

The Dobbs Truss has a swivel joint connecting its concave pad with a body band. This swivel joint permits the body to move about freely in any direction without displacing the pad, in the bath, in swimming, in crawling—The Dobbs Truss exerts the same even, protective pressure and may be worn with complete security and comfort.

(Disseminated by Circular designated "The Dobbs Truss," Times Building, New York.)

(41) RUPTURED, relief with Dobbs Truss. Reason should teach you not to spread with a ball or bulb. Dobbs Truss uses a patented concave pad that supports like your hand. May be worn at work, play and bathing. * * *

(Disseminated by advertisement in "Sunday News" New York, April 20, 1947, issue.)

(42) RUPTURED, improved Dobbs Truss cannot slip, holds muscles together with a soft concave pad * * * reason should teach you not to place a bulb or ball in opening of ruptures which keeps muscles spread apart.

(Disseminated by advertisement in Los Angeles Examiner, Los Angeles, California, February 16, 1947, issue.)

(43) RUPTURED, improved Dobbs Truss cannot slip, holds muscles together with a soft concave pad * * * reason should teach you not to place a bulb or ball in opening of rupture which keeps muscles spread apart.

(Disseminated by advertisement in Boston Post, Boston, Mass., September 13, 1946.)

PAR. 7. The advertisements disseminated by respondents the Dobbs Truss Company, Inc., and Homer C. Dobbs, J. Wood Dobbs and Gladys W. Clark, individually and as officers of the Dobbs Truss Company, Inc., either in their own behalf or by their authorized agents are the following:

Nos. 1 to 43, inclusive.

Advertisements disseminated by respondent Ellie H. Vine, Sr., trading as Dobbs Truss Appliance Company, are as follows: 1, 3, 4, 12, 13.

Advertisements disseminated by respondent Clarence L. Clark, trading as Dobbs Truss Appliance Company, are as follows: 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15.

Advertisements disseminated by respondent Vic L. Brandon, are as follows: 1, 3, 16.

Advertisements disseminated by respondent Lemuel S. Dobbs, trading as Dobbs Truss Company, are as follows: 17, 18, 19.

Advertisements disseminated by respondent Scott C. McClellan, trading as Dobbs Truss Distributing Company, are as follows: 1, 3, 20.

Advertisements disseminated by respondent Dobbs Truss Company of New York, Inc., and respondents Edward Nolin, Rose Nolin and Rosamond Nolin, individually, and as officers of Dobbs Truss Company of New York, Inc., are as follows: 1, 21, 40, 41.

Advertisements disseminated by respondent Edward Nolin, trading as Dobbs Truss Company, are as follows: 1, 3, 22, 23, 25, 26, 27, 24, 40, 42, 43.

Advertisements disseminated by respondent Irvin O. Taylor, trading as The Dobbs Truss, are as follows: 1, 3, 28, 29.

Advertisements disseminated by respondents William L. Powell and Ed F. Hill, trading as the Dobbs Truss Company of the Western States, are as follows: 3, 32, 33, 34, 35.

Advertisements disseminated by respondent G. R. Gardner, trading as The Dobbs Truss Company, are as follows: 3, 38, 39.

Advertisements disseminated by respondent Henry J. Watkins, Jr., trading as Dobbs Distributing Company are as follows: 3, 36, 37.

PAR. 8. Through the use of advertising contained in the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondents The Dobbs Truss Company, Inc., Homer C. Dobbs, J. Wood Dobbs and Gladys W. Clark, individually and as officers of The Dobbs Truss Company, Inc., represented directly and by implication, that the use of their device, The Dobbs Truss, is a remedy or cure for ruptures; that it will control and correct hernias; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all kinds and types of ruptures; that it assists nature in healing ruptures; that it will keep ruptures tightly closed at all times; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing, pinching, slipping, and constricting pressure; that it will hold muscles together and prevent muscles from spreading apart; that it will prevent a rupture from spreading or becoming struted or enlarged; that it will strengthen

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and restore the muscles to their original state; that it is a marvelous scientifically designed invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers as aforesaid and respondent Clarence L. Clark, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will prevent a rupture from spreading or becoming strutted; that it is a marvelous scientifically designed invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers aforesaid and respondent Ellie H. Vines, Sr., an individual trading as Dobbs Truss and Appliance Company, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will prevent muscles from spreading; that it will prevent a rupture from spreading; that it is a marvelous scientifically designed invention for the treatment of ruptures materially different, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers aforesaid and Vic L. Brandon, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing, slipping and constricting pressure; that it will hold muscles together and prevent them from spreading apart; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named as aforesaid and Lemuel S. Dobbs, trading as Dobbs Truss Company, represented that said device is a remedy or cure for rupture; that it will control and correct hernias; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will hold a rupture in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all chafing, binding, and constricting pressure; that it will restore the muscles to their original state and prevent them from spreading apart; that it will prevent a rupture from becoming enlarged.

The Dobbs Truss Company, Inc., and its officers named aforesaid and Scott C. McClelland, trading as Dobbs Truss Distributing Company, represented that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will prevent the muscles from spreading apart and prevent the rupture from becoming strutted; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named aforesaid, and Dobbs Truss Company of New York, Inc., a corporation, Edward Nolin, Rose Nolin and Rosamond Nolin, individually and as officers of corporate respondent Dobbs Truss Company of New York, Inc., and respondent Edward Nolin, trading as Dobbs Truss Company, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all kinds and types of ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will prevent a rupture from spreading.

The Dobbs Truss Company, Inc., and its officers aforesaid and Edward Nolin, an individual trading as Dobbs Truss Company, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all kinds and types of ruptures; that it assists nature in healing ruptures; that it will keep

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ruptures tightly closed at all times; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing, slipping and constricting pressure; that it will hold muscles together and prevent them from spreading apart; that it will prevent a rupture from spreading; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers aforesaid, and Irvin O. Taylor, trading as The Dobbs Truss, represented that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing, pinching, slipping and constricting pressure, that it will hold muscles together and prevent them from spreading apart; that it will prevent the rupture from becoming enlarged; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named aforesaid and William L. Powell and Ed F. Hill, co-partners trading as The Dobbs Truss Distributing Company, represented directly and by implication that said device is a remedy or cure for rupture, that it is an adequate and effective treatment for all kinds and types of ruptures; that it will relieve all types and kinds of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all the irritation, chafing, binding, rubbing, slipping and constricting pressure; that it will prevent muscles from spreading apart; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named aforesaid and John C. Dobbs, trading as Dobbs Truss Company and as Dobbs Truss Sales Company of the Western States, represented that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will keep ruptures tightly closed at all times; that it will hold a rupture securely and comfortably

in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing, slipping and constricting pressure; that it will hold muscles together and prevent them from spreading apart; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named aforesaid and George R. Gardner, trading as Dobbs Truss Company, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will strengthen muscles and prevent them from spreading apart; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

The Dobbs Truss Company, Inc., and its officers named aforesaid and Henry J. Watkins, Jr., trading as The Dobbs Truss Distributing Company, represented directly and by implication that said device is a remedy or cure for rupture; that it is an adequate and effective treatment for all kinds and types of ruptures; that it assists nature in healing ruptures; that it will hold a rupture securely and comfortably in place at all times and permit complete freedom of bodily movement and physical activity without being displaced; that it does not hinder circulation of the blood and does away with all irritation, chafing, binding, rubbing and constricting pressure; that it will prevent the muscles from spreading apart; that it is a marvelous invention for the treatment of ruptures materially different from, and superior to, other trusses.

PAR. 9. The said advertisements are misleading in material respects and are "false advertisements" as that term is defined in the Federal Trade Commission Act.

In truth and in fact, the use of said device is not a remedy or cure for ruptures. It will not control or correct hernias. It is not an adequate and effective treatment for any kind or type of rupture. It will not relieve any kind or type of rupture. It will not assist nature in healing ruptures. It will not keep ruptures tightly closed at any time. It will not hold a rupture securely and comfortably in place at all times, and will not permit complete freedom of bodily move-

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ment and physical activity without displacement. The use of said device will hinder circulation of the blood and will not do away with irritation, chafing, binding, rubbing, pinching, slipping and constricting pressure. Said device will not hold muscles together or prevent muscles from spreading apart. It will not prevent a rupture from spreading or becoming struttled or enlarged. It will not strengthen or restore muscles to their original state. Said device is not a marvelous scientifically designed invention for the treatment of ruptures and is not materially different from, or superior to, other trusses.

PAR. 10. The aforesaid acts and practices of respondents as herein alleged 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.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 11, 1950, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with unfair and deceptive acts and practices in commerce through the dissemination of false and misleading advertisements of a device, in violation of the provisions of said Act. After the issuance of said complaint and the filing of an answer thereto on behalf of all respondents, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a hearing examiner theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. On November 1, 1950, O. C. Dobbs, Jr., individually and as an officer of The Dobbs Truss Company, Inc., and on February 8, 1951, Dobbs Truss Sales Company, Inc., a corporation, were added as respondents in this matter by order of the Commission, with the consent of all parties. The answer of all respondents filed October 9, 1950, was adopted by respondent O. C. Dobbs, Jr., as his answer. A separate answer on behalf of Dobbs Truss Sales Company, Inc., was filed on February 14, 1951. It was agreed by all parties that these respondents would be regarded as having been party respondents to this proceeding from its inception. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, and proposed findings of fact and conclusions presented by counsel, and said hearing examiner on March 12, 1951, filed his initial decision.

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Within the time permitted by the Commission's Rules of Practice, respondents filed with the Commission an appeal from said initial decision, and thereafter this proceeding regularly came on for final consideration by the Commission upon said appeal and the briefs in support of and in opposition thereto; and the Commission, having issued its order granting said appeal in part and denying it in part, 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, conclusions drawn therefrom and order, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent The Dobbs Truss Company, Inc., is a corporation organized and existing under the laws of the State of Alabama with its office located at 753 Lomb Boulevard, S. W., Birmingham, Alabama.

PAR. 2. In 1949 respondent The Dobbs Truss Company, Inc., whose stock was held by O. C. Dobbs, Sr., his wife, ten children and six sons-in-law, was foreclosed, although not dissolved. Two new corporations were formed simultaneously. The O. C. Dobbs Manufacturing Company, not a respondent herein, took over its functions, and respondent Dobbs Truss Sales Company, Inc., under contract from The O. C. Dobbs Manufacturing Company, began the sale and distribution of the Dobbs Truss. The latter corporation is owned, through stockholding, by respondents Homer C. Dobbs, O. C. Dobbs, Jr., and J. Wood Dobbs; and Homer C. Dobbs is president thereof. Respondent Homer C. Dobbs is and since 1945 has been president of The Dobbs Truss Company, Inc., and since March of 1949 has also been vice-president thereof. Prior to that date, respondent J. Wood Dobbs was vice-president of said corporation. Until 1949, respondent Gladys W. Clark was secretary-treasurer of said corporation but since that date has had no connection therewith, being succeeded in said office by respondent O. C. Dobbs, Jr., who presently exercises the functions of that office.

PAR. 3. Respondent Ellie H. Vines, Sr., is an individual trading as Dobbs Truss and Appliance Company with his office and principal place of business located at 1725 Third Avenue, North, Birmingham, Alabama.

PAR. 4. Respondent Clarence L. Clark is an individual trading as Dobbs Truss Appliance Company with his office and principal place of business located at 205 Whitehall Street, S. W., Atlanta, Georgia.

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PAR. 5. Respondent Vic L. Brandon is an individual trading under his own name with his office and principal place of business located at 623 North Quincy Street, Clinton, Illinois.

PAR. 6. Respondent Lemuel S. Dobbs is an individual trading as Dobbs Truss Company located until 1949 at 83 South High Street, Columbus, Ohio, and since then at 2132 East 9th Street, Cleveland, Ohio.

PAR. 7. Respondent Scott C. McClelland is an individual trading as Dobbs Truss Distributing Company with his office and principal place of business located at 631 Maison-Blanche Building, New Orleans, Louisiana.

PAR. 8. Respondent Dobbs Truss Company of New York, Inc., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 1475 Broadway, New York, N. Y., and respondents Edward Nolin, Rose Nolin and Rosamond Nolin are officers thereof. Respondent Edward Nolin also trades under the name of Dobbs Truss Company at 1475 Broadway, New York, N. Y., and in Philadelphia, Pennsylvania. Up until April of 1950, respondent Edward Nolin traded under the name of Dobbs Truss Company in Los Angeles, California, but has not done so since that date. He also maintained an office under the same trade name in Boston, Massachusetts, until 1949, at which time it was closed. He also maintained an office under the name of Dobbs Truss Company in Chicago, Illinois, until July 1, 1950.

PAR. 9. Respondent Irvin O. Taylor is an individual trading as The Dobbs Truss with his office and principal place of business located at 541 Virginia Drive, Orlando, Florida.

PAR. 10. Respondents William L. Powell and Ed. F. Hill are individuals who up until 1947 or 1948 traded as co-partners under the name of The Dobbs Truss Distributing Company with their office and principal place of business located at 705 Olive Street, St. Louis, Missouri. At that time respondent William L. Powell removed to Indianapolis, Indiana, where he has since traded from 6172-B Compton Street, Indianapolis, Indiana. Respondent Ed. F. Hill ceased doing business in St. Louis, Missouri, in May or June 1950 but has since traded in North Carolina with an office at Kannapolis, N. C.

PAR. 11. Respondent John C. Dobbs is an individual trading as Dobbs Truss Company who, up until 1948 or 1949, was located in San Francisco, California, and also, under the name of Dobbs Truss Sales Company of the Western States, in Oakland, California. For two or three months in 1950 he also was located in Los Angeles, California, but at the present time is not in business.

PAR. 12. Respondent George R. Gardner is an individual trading as Dobbs Truss Co. with his office and principal place of business located at 866 Spitzer Building, Toledo, Ohio.

PAR. 13. Respondent Henry J. Watkins, Jr., is an individual trading as The Dobbs Truss Distributing Company with his office and principal place of business located at 913 Woodward Building, Washington, D. C.

PAR. 14. The individual respondents named as officers of the corporations described in Paragraphs One, Two and Eight, above, have formulated, directed and controlled the policies, acts and practices of the respective corporations with which they are now or were connected.

PAR. 15. Respondents are now, and for some years last past, within the limitations set out in the preceding paragraphs above, have been, engaged in selling and distributing a patented device, as "device" is defined in the Federal Trade Commission Act. Said device is designated and trade-marked as "Dobbs Truss."

This is a length of tension spring steel, covered with rubber, long enough to encircle half of the lower abdomen, sufficiently flexible to be bent to conform to body contours, and on each end of which are affixed concave rubber pads, varying in diameter, which turn on the steel rod as upon an axis, to obviate slipping. Sizes for infants, for the very obese and for those with double hernias are also sold.

Hernia and rupture to the layman are synonymous terms, and as used in respondents' truss advertisements both connote to the layman that type of hernia called by the medical profession inguinal hernia. This is a protrusion of part of the contents of the abdominal cavity, usually the intestines, downward and outward into the inguinal canal and toward the scrotum. In early life in all males the lining of the abdominal cavity protrudes below the abdomen into the inguinal canal. In most people, however, this "sac" is obliterated during growth and the aperture through which it extended grows over with tissue. In some people this obliteration does not occur and the sac remains. It is into this sac usually in later life, as weight increases and bodily tone diminishes, that the abdominal contents descend. There can be no rupture unless this defect (sac) of body structure exists. The protrusion itself of the abdominal contents, which are essential and vital parts of the body, is a defect in the bodily structure. Respondent's appliance is intended and sold to retain this protrusion within the abdominal cavity where it belongs, for the proper functioning of the body. Examination of the truss itself and the demonstration in the hearings of how it is applied to the body show that respondents'

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product is an instrument, apparatus or contrivance intended to affect the structure or function of the body of man.

PAR. 16. Respondent The Dobbs Truss Company, Inc., until 1949 and since then respondent Dobbs Truss Sales Company, Inc., have caused said product, when sold, to be transported from Birmingham, Alabama, to other respondents herein, located as hereinabove described, maintaining thereby a course of trade in said product in commerce between and among the various States of the United States and the District of Columbia, which has been constant and the volume of which has been and is substantial.

PAR. 17. Respondent The Dobbs Truss Company, Inc., was founded by O. C. Dobbs about ten years ago. It was, until 1949, engaged in the manufacture, sale and distribution of the Dobbs Truss. It issued territorially exclusive franchises to and sold at wholesale to distributors, most of whom are respondents herein. These franchises provided that the distributor would undertake to promote the sale of the device in his territory and to that end would do such advertising as may seem to him proper and advisable. They further provided for cancellation by Dobbs Truss Sales Company, Inc., in the event that the distributor did not always conduct himself in such a way as to reflect credit on the manufacturer or was guilty of any immoral or illegal conduct or failure to pay bills in connection with the sale of the device. It was further provided that, when sold to the distributor, the device became the property of the latter and the distributor was liable for all refunds, guarantees or claims made by him to his customers. The franchise was couched in the usual terms of party of the first part and party of the second part. Nowhere therein does the word "agent" appear, except in the expression following the second party's name—"is desirous of becoming sole agent for the sale and distribution of said product for the territory described as follows:"—and in the paragraph permitting party of the second part to appoint agents and subagents within his territory.

On February 25, 1947, the Federal Trade Commission wrote The Dobbs Truss Company, Inc., as to claims made for the Dobbs Truss in various advertising, asking whether it had placed such advertising, either radio or periodical, and to submit specimens. No reply to this letter is in the record. However, shortly thereafter, on March 26, 1947, and on April 3, 1947, The Dobbs Truss Company, Inc., sent out a "special bulletin" to distributor respondents stating that the Federal Trade Commission had objected to certain advertised claims for the Dobbs Truss and that if the distributor were so advertising, to please stop doing so; that the company at some expense had made up various

advertising mats and had supplied them to distributor respondents; that it wanted the distributor respondents to use the mats so as to make the advertising nationally uniform and at the same time satisfactory to the Commission. These bulletins further offered the mats free of charge and stated that by their use The Dobbs Truss Company, Inc., could control and know what its distributors were using in the way of advertising.

Respondent The Dobbs Truss Company, Inc., made no objection to any of the trade names used by the various distributors nor to the use of the trade-marked name Dobbs Truss but did object to the use of its corporate name, The Dobbs Truss Company, Inc. Only one meeting of the distributor respondents was ever held at the offices of The Dobbs Truss Company, Inc., and advertising discussions at that meeting were limited to consideration of the mats of suggested advertisements and various printed circulars furnished to the distributor respondents. The Dobbs Truss Company, Inc., did not give its approval to any advertisement disseminated by any distributor respondent other than by furnishing the mats and circulars prepared by it. It did not pay any advertising allowance or furnish any other financial aid to the distributor respondents. All of the advertisements disseminated by the distributor respondents bear the name and temporary local or territorial address of the distributor disseminating it. These advertisements, other than those prepared from circulars furnished by The Dobbs Truss Company, Inc., contain no reference whatever to The Dobbs Truss Company, Inc.

The franchise agreements did not give The Dobbs Truss Company any control over the advertising policies of its distributors. Nor did it attempt to exercise any. The evidence of record, including the bulletins above referred to, only shows that The Dobbs Truss Company, Inc., attempted in an advisory capacity to assist its distributors to avoid misrepresentation of their product in their advertisements.

From this record it is concluded that The Dobbs Truss Company, Inc., had no connection with or responsibility for any of the advertisements disseminated by the respondent distributors other than those which were prepared from the advertising mats and circulars furnished by it.

In 1949, after respondent Dobbs Truss Sales Company, Inc., contracted with The O. C. Dobbs Manufacturing Company to buy and resell the entire output of Dobbs Trusses, it issued its franchise, in substantially the same form, to most of the individuals and corporations which had been distributors of The Dobbs Truss Company, Inc. There is no substantial evidence in the record, however, that it composed, issued, distributed or disseminated any circular, mat or ad-

vertisement or that it knew of, authorized, controlled or subsidized any advertising or representation by any distributor.

PAR. 18. In the course and conduct of their business, all respondents have, since March 31, 1938, disseminated and caused the dissemination of advertisements concerning said device by the United States mails and by various means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing and which were likely to induce the purchase of said device, and said respondents have disseminated and caused the dissemination of advertisements concerning said device for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said device in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 19. Hernia and rupture are synonymous to the layman, and as used in respondents' truss advertisements both terms connote inguinal hernia to him. Inguinal hernia may be simple or uncomplicated, in which cases the extrusion recedes by itself upon reclining or can be pushed back into the abdominal cavity from which it came, by the patient or by another. Inguinal hernia may also be non-reducible, in which cases it adheres to the inguinal canal into which it has protruded and cannot be put back into the abdominal cavity. The only cure, remedy or treatment is surgery. Some non-reducible hernias become strangulated, whereby the blood supply to the extrusion is cut off or materially reduced by the pressure of tissues surrounding the aperture or in the inguinal canal. Strangulation, untreated, shortly results in gangrene and death. Immediate surgery is the only cure, remedy or treatment in such cases. The only purpose of any truss, including respondents', is to keep the contents of the abdominal cavity from protruding. It is obvious, therefore, that in the case of irreducible or strangulated hernias, respondents' device cannot cure, remedy, treat, relieve, control or correct, nor will it hold the rupture tightly closed at any time, hold the muscles together, keep them from spreading or strutting, or restore them to their original state. Neither can it assist nature to do any of these things. Nor will it do away with all chafing, binding, rubbing, constricting pressure or hindrance to the circulation, since the pressure of respondents' device would necessarily be on the extrusion instead of on the abdominal wall through which it protruded. Nor can it be worn with either security or comfort. Any and all such representations are, therefore, necessarily false, misleading and deceptive as to the effect of the use of the Dobbs Truss in cases of irreducible inguinal rupture. The record is silent as to the prevalence of irreducible inguinal rupture. However, it is inferred that irreducible inguinal rupture is common,

since the medical experts were all familiar with it and since one of the respondents' advertisements cautions that unless even a small rupture is held in by a truss, it may soon become an irreducible rupture. The advertisements and circulars disseminated by the various respondents herein are unlimited in appeal. Nowhere are the words "rupture" and "hernia" qualified by the word "reducible" or any other expression of similar import, nor is there any statement in such advertisements and circulars suggesting that the promised benefits of purchase and use do not and cannot apply to irreducible rupture and hernia. Respondents' representations which so refer to rupture or hernia without any further qualification include both reducible and irreducible hernia and rupture in their meaning.

PAR. 20. One of the two circulars describing the Dobbs Truss, printed and disseminated by The Dobbs Truss Company, Inc., to various distributor respondents is a reprint of a story written by a reporter for and printed in the Birmingham Post on June 19, 1946, describing how O. C. Dobbs came to invent the device and the extent of the business done in it. This circular contains the statement, "*He was cured.*" Within six months he (Dobbs) claims, he was able to return the parts to the junk pile, 'a cured man.'" Although this is the statement of the newspaper reporter, by adopting and disseminating it respondents made it their own. Although it is a statement only as to the therapeutic effect of the device on one man, a reader who has a rupture would reasonably conclude that the Dobbs Truss would cure his rupture also. This circular was also disseminated, as found in Paragraph Eighteen, supra, by respondents Ellie H. Vines, Sr., trading as Dobbs Truss and Appliance Company; Vic L. Brandon; Scott C. McClelland, trading as Dobbs Truss Distributing Company; Dobbs Truss Company of New York, Inc.; Edward Nolin, Rose Nolin and Rosamond Nolin, as officers of Dobbs Truss Company of New York, Inc.; Edward Nolin, trading as Dobbs Truss Company; and Irvin O. Taylor, trading as The Dobbs Truss.

PAR. 21. The representation contained in the foregoing paragraph is false, misleading and deceptive. No truss, appliance or device can do anything for an irreducible hernia. The great weight of the evidence is that reducible hernia can only be cured by surgical removal of the hernial sac and the surgical closing of the aperture through which it extends. For obvious reasons, the testimony of laymen that they were cured by wearing respondents' device is of little weight. Respondents' medical expert testified as to one case of cure he said he had seen, but he also said he recommends and performs surgery on his own patients to cure hernia. This "cure" testimony cannot outweigh the longer years of actual experience by experts in this field. There

was some testimony that hernias in very young infants can sometimes be cured by a truss but there is no unanimity of medical opinion as to the efficacy of such therapy. Surgical correction is now used on very young infants. Even where truss treatment has succeeded, it is limited to four years or younger. Cure by truss in these rare cases is impossible unless the hernial sac is obliterated and the size of the aperture reduced—a natural process possible only in infants and not in adults. The record does not show whether the medical experts testifying as to cure in infants were discussing only inguinal hernia or hernias in general, of which the umbilical type naturally accounts for a number of infancy ruptures. It is, therefore, inferred that cures of hernia in young infants by the wearing of a truss is so rare and uncertain as to be negligible.

PAR. 22. By newspaper advertisement respondents The Dobbs Truss Company, Inc., Homer C. Dobbs, J. Wood Dobbs, Gladys W. Clark and O. C. Dobbs, Jr., as officers thereof, disseminated, as found in Paragraph Eighteen, supra, a representation that their device keeps a rupture tightly closed at all times, while working, lifting, walking or swimming. This representation is false, deceptive and misleading as to any hernia. To close a reducible rupture means to close the aperture through which it has protruded, to close it anatomically. It does not mean merely to hold the protrusion in. The preponderance of the testimony is that anatomical closure can only be accomplished surgically. Lay witness testimony that the Dobbs Truss kept the rupture closed is rejected because a layman does not have the detailed anatomical knowledge necessary to give such a statement weight. Non-reducible hernia cannot be closed at all by any device.

PAR. 23. All respondents, except Dobbs Truss Sales Company, Inc., Dobbs Truss Company of New York, Inc., and its officers as such, John C. Dobbs and Lemuel S. Dobbs, by means of a circular, have disseminated, as found in Paragraph Eighteen, supra, representations that the Dobbs Truss when used in rupture cases:

- (1) Is different from and superior to other trusses;
- (2) Does not hinder circulation of the blood and does away with all chafing, rubbing, irritation, binding, slipping and constricting pressure;
- (3) Will "help nature help you";
- (4) May be worn with complete security and comfort; and
- (5) Is a marvelous invention for rupture treatment.

The second, third and fourth of these representations are false as to non-reducible rupture for reasons set out in Paragraph Nineteen, supra. As to reducible hernia, the third one of these representations is false, misleading and deceptive in its breadth and implications.

"It [respondents' device] will help nature help you" plainly implies cure for rupture through a combination of the device and bodily recuperative powers. There was evidence from layman-purchaser-wearers of respondents' device that their protrusions extruded less and less the longer the device was worn, and from a medical expert user to the same effect; however, the latter recommended surgery for his hernia patients and the preponderance of qualified medical opinion was that no device or combination of devices allied with "nature" could effect a cure for rupture except possibly in very young infants—that the only cure was surgical repair. The opinion testimony of respondents' medical expert that if the protrusion is completely reduced and maintained, natural bodily processes will eventually close the aperture, is rejected as unsubstantial.

PAR. 24. On the first representation set out in Paragraph Twenty-Three, supra, there is substantial and credible medical opinion that respondents' device is no different from, nor superior to, other trusses in the sense that the principle of all trusses is the same—to keep the protrusion in. There are, however, different and superior means of accomplishing a given end. For example, although, the old-fashioned wooden leg and the modern artificial leg both have the same basic function of furnishing artificial support, there is a wide difference between them, and the modern artificial limb is a superior product. Respondents' device and a number of other trusses as well are in the record. Still other trusses were described. The application and fitting of respondents' device was demonstrated in the hearings. Upon consideration of the hearing examiner's findings based upon the visual and other evidence and upon a consideration of the other evidence of record, it is concluded that the allegations of the complaint as to respondents' representations that their device is different from and superior to other trusses have not been sustained.

As to the second representation set out in Paragraph Twenty-Three above, there is some opinion evidence that some of the claims made for respondents' device are untrue. This evidence came, however, from men who had never seen respondents' device before. Other evidence indicates that some of these claims are true only if the device is well fitted. However, there is no evidence in the record that respondents' device is not well fitted when sold. There is testimony that care is taken to fit the Dobbs Truss when it is sold. Also, actual users of the Dobbs Truss, including a medical expert user, testified that it did not bind, chafe, rub, irritate or slip. On such points, opinion testimony from witnesses without previous experience with this device is outweighed by the testimony of equally credible witnesses who have had actual experience with its use. In a very strict or

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narrow sense, the Dobbs Truss does chafe, bind, rub, irritate and slip upon occasion and to a minor degree. Long wearing will show a thickening of the skin where the two concave pads press the body. But comfortable clothes and shoes do all these things at times and under some circumstances. It is obvious from the advertising itself that these claims were made in comparison with other trusses, such as are in the record, and these claims are to be taken in a general sense. It is concluded that respondents' advertising reasonably would be, and was, so understood by readers. It is obvious that the satisfied wearers were testifying that the Dobbs Truss did not slip, chafe, bind, pinch, rub or irritate them to any appreciable degree, nor to the extent caused by other trusses which they had worn. Therefore, the record does not sustain the allegations of the complaint as to respondents' representations that the Dobbs Truss does not chafe, bind, rub, slip or irritate, where the rupture is reducible. As applied to non-reducible ruptures, these representations are false for the reasons set out, supra, in Paragraph Nineteen.

On the question of the device hindering the circulation of the blood, the medical evidence was unanimous that there was some hindrance or impairment of circulation. This overcomes any law witness testimony to the contrary and, accordingly, the finding is that such representation is false, misleading and deceptive. By the same reasoning, if the device impairs the circulation of the blood, it must exert constricting pressure and, accordingly, the representation that it does not is found to be false, misleading and deceptive, as to any inguinal rupture.

As to the representation that respondents' device may be worn with complete security and comfort by those with reducible rupture, there is no evidence it will not keep the protrusion in. There was medical opinion evidence that no truss would hold a hernia under all conditions and that any truss is uncomfortable. This opinion evidence was not based on any acquaintanceship with the Dobbs Truss. On the other hand, users of it testified as a fact that the device was both secure and comfortable, far more so than other trusses, and that it did hold the rupture under conditions of exercise, work and rest. Actual usage on such points is superior in weight to opinion, no matter how distinguished and extensive the general background thereof. Consequently, the record does not sustain the allegation of the complaint that these representations are false, misleading and deceptive as to the use of the Dobbs Truss by those having a reducible rupture. However, upon this record it is found that these representations are false as to the use of a Dobbs Truss by those having non-reducible ruptures, for the reasons set out, supra, in Paragraph Nineteen.

PAR. 25. The representation that the device is a marvelous invention for rupture treatment raises the questions of whether it is an invention and whether it is a treatment for rupture. The word "marvelous" is found to be simply descriptive puffing. The device is patented and therefore has some *prima facie* novelty. Visual comparison alone with other trusses in the record shows that it is different in construction, fitting and application. There is no evidence in the record that it is not an invention except the opinion of two medical experts that its principle was the same as all other trusses—namely, to keep the protrusion in. The weight of the evidence is with the affirmative. The finding, therefore, is that that part of the representation—that the device is an invention—is neither false, misleading nor deceptive. Neither of the two medical experts testifying in support of the complaint was asked whether the device was a treatment for rupture. The medical expert testifying for the respondent defined rupture treatment as reduction and maintenance of the reduction, which the Dobbs Truss will do with a reducible rupture. His distinguished treatment from cure or remedy and, in effect, said that this device is a treatment for reducible rupture. There is no evidence to the contrary on this point. The medical opinion was unanimous that where surgery was contraindicated, trusses were recommended, obviously as a treatment or control. These cases amounted to about 2 percent of the total patients seeking cure. Therefore, the record does not sustain the allegation of the complaint that this representation is false, misleading and deceptive as to reducible rupture. However, upon this record it is found that this representation is false as to non-reducible rupture, for reasons stated, *supra*, in Paragraph Nineteen.

PAR. 26. All respondents, except Dobbs Truss Sales Company, Inc., William L. Powell, Ed. F. Hill and John C. Dobbs, have disseminated, as found in Paragraph Eighteen, *supra*, advertisements representing that the Dobbs Truss when used in rupture cases does not spread the muscles apart or spread or strut the rupture, and that with it the wearer gets maximum effective relief. As to those people with non-reducible rupture, these representations are false, for reasons set forth, *supra*, in Paragraph Nineteen. As to reducible rupture, on the first of these claims there is a conflict of evidence. One medical expert, testifying in support of the complaint, was of the opinion that respondents' device prevents a rupture from spreading or enlarging; a second expert was of the opinion that it cannot prevent muscles from spreading and that it does not hold the muscles in place. Respondents' expert was of the opinion that the ordinary truss does spread the muscles apart, but that respondents' device does not strut (expand) the muscles. The latter was a statement of fact rather than an opinion,

since the witness had worn the device for about a year himself. Lay witnesses who wear respondents' device testified it did not spread their abdominal muscles. Upon this record it is believed that the allegations of the complaint that these representations are false, misleading and deceptive have not been sustained as to reducible rupture.

The representation that respondents' device gives maximum effective relief has not been proven on this record to be false, misleading or deceptive as to reducible rupture. Only one of the two experts tendered in support of the complaint was queried on this point, his reply being that the device would relieve the symptoms of hernia. Respondents' expert testified that relieving a hernia meant simply putting the protrusion back in the abdomen and keeping it there, and that the device does that. Several lay users of the device testified it gave them relief from pain and protrusion. The words "maximum" and "effective" are taken simply as descriptive "puffing." There has been a failure of proof that respondents' device does not give the relief advertised to those with reducible rupture in the sense of the only definition appearing in this record.

PAR. 27. Respondents Ellie H. Vines, Sr., trading as Dobbs Truss and Appliance Company, and Clarence L. Clark, trading as Dobbs Truss Appliance Company, have disseminated, as found in Paragraph Eighteen, supra, an advertisement representing that the Dobbs Truss is different from other trusses. The allegation of the complaint that this representation is false, misleading and deceptive has not been sustained, for the reasons stated in Paragraph Twenty-Four, supra.

PAR. 28. Respondent Vic L. Brandon has disseminated, as found in Paragraph Eighteen, supra, an advertisement representing that the Dobbs Truss when used in rupture cases holds the abdominal muscles together. Although one medical expert implied that it would hold the abdominal muscles together as claimed, the greater weight of the expert testimony on this point is that it would not. It is found, therefore, that this representation is misleading and deceptive, as to both reducible and non-reducible rupture.

PAR. 29. Respondent Lemuel S. Dobbs, trading as Dobbs Truss Company, has disseminated, as found in Paragraph Eighteen, supra, advertisements and a circular representing directly and by implication that the Dobbs Truss when used in rupture cases will:

- (1) Correct a hernia;
- (2) Control a hernia;
- (3) Restore the muscles to their original state;
- (4) Free the wearer of his rupture completely and permanently;
- (5) Do away with all chafing, binding and constricting pressure;
- (6) Not slow up the circulation of the blood;

- (7) Not enlarge the rupture;
- (8) Permit complete freedom of bodily movement without displacement of the truss pad.

All of these representations are false as to non-reducible hernia, for reasons set out, *supra*, in Paragraph Nineteen. As to reducible hernia, the representations numbered 5, 7 and 8, above, have not been proven to be false, misleading or deceptive, for the reasons stated in Paragraphs Twenty-Four and Twenty-Six, respectively, except that the representation that the device exerts no constricting pressure is found to be false, misleading and deceptive, for reasons stated in Paragraph Twenty-Four, *supra*. Number 6, above, for reasons stated in Paragraph Twenty-Four, *supra*, is found to be false, misleading and deceptive. Number 4 clearly implies a complete and permanent cure and is found to be false, misleading and deceptive, for the reasons stated in Paragraphs Nineteen and Twenty-One, *supra*.

PAR. 30. Only one of the three medical experts testifying in this proceeding was asked whether respondents' device would correct a hernia. His opinion was that it would not. There is no substantial or direct evidence to the contrary, except one instance of "cure" which is rejected as unsubstantial. Hence, the representation that the device will correct a reducible hernia is found to be false, misleading and deceptive.

One medical expert testified directly, and the other two by implication, that respondents' device will control a rupture. It is obvious from the record that all meant this in the sense of keeping the contents of the abdominal cavity from protruding. The representation does not imply cure, correction, remedy or the removal of the condition or its cause. If it did, it would be false as to any inguinal rupture, for reasons set out, *supra*, in Paragraphs Nineteen and Twenty-One. At most, it implies symptomatic relief and preventing a worsening. In this sense, the representation has not been proven to be false, misleading or deceptive as to reducible hernia.

While the testimony of one medical expert was that in his opinion respondents' device will restore the abdominal muscles to their original state, the greater weight of the evidence is that it will not, and the finding, accordingly, is that this representation is false, misleading and deceptive.

PAR. 31. Respondent Scott C. McClelland, trading as Dobbs Truss Distributing Company, disseminated, as found in Paragraph Eighteen, *supra*, an advertisement representing that respondents' device does not strut the rupture and does not spread the muscles apart in rupture cases. These representations are found to be false as to non-reducible hernia, for reasons stated in Paragraph Nineteen, above.

One medical expert was of the opinion that the Dobbs Truss would strut a rupture, a second did not know the meaning of the word, and a third, who had personal experience with the device, stated definitely it did not strut the rupture. Upon this record this representation has not been proven to be false, misleading or deceptive, as to reducible hernia.

The representation that respondents' device does not spread the abdominal muscles apart, as to reducible hernia, has not been proven to be false, misleading or deceptive, for the same reasons stated in Paragraph Twenty-Six, *supra*.

PAR. 32. Respondents Dobbs Truss Company of New York, Inc., Edward Nolin, Rose Nolin, and Rosamond Nolin, as officers thereof, have disseminated, as found in Paragraph Eighteen, *supra*, advertisements and a circular representing that the Dobbs Truss gives the wearer amazing, efficient relief in rupture cases and does not spread the rupture. These representations have hereinabove been considered as to reducible hernia in Paragraph Twenty-Six. For the reasons cited therein, the finding here is that they have not been proven to be false, misleading or deceptive as to reducible hernia. Both of them are false as to non-reducible hernia, for reasons stated in Paragraph Nineteen, above.

PAR. 33. Respondent, Edward Nolin, trading as Dobbs Truss Company, has disseminated, as found in Paragraph Eighteen, *supra*, advertisements and circulars representing that the Dobbs Truss when used in rupture cases:

- (1) Does not spread muscles;
- (2) Does not hinder circulation of the blood;
- (3) Cannot slip;
- (4) Keeps rupture tightly closed at all times;
- (5) Gives relief;
- (6) Holds muscles together;
- (7) Does away with all chafing, binding, rubbing and irritation;
- (8) May be worn with complete security and comfort;
- (9) Does away with all constricting pressure.

All of these representations are false as to non-reducible rupture, for the reasons stated in Paragraph Nineteen, above. Representations numbered 2, 4 and 9 have hereinbefore been found to be false, misleading and deceptive as to reducible rupture and are again so found for the reasons given in Paragraphs Twenty-Four and Twenty-Two, above. The representation that the device holds muscles together when used in connection with a reducible rupture is, by the greater weight of medical evidence in the record, misleading and deceptive

for the reasons stated in Paragraph Twenty-Eight. The remaining representations, above, numbered 1, 3, 5, 7 and 8, have not been proven to be false, misleading or deceptive in cases of reducible rupture, for the reasons hereinabove given in Paragraphs Twenty-Four and Twenty-Six.

PAR. 34. Respondent Irvin O. Taylor, trading as The Dobbs Truss, has disseminated, as found in Paragraph Eighteen, supra, advertisements in newspapers representing that the Dobbs Truss when used in rupture cases will not enlarge the rupture, does not spread muscles, is comfortable to wear and draws the opening together, giving nature a chance to repair; that it is different and does not pinch, bind, slip or chafe. The representation that the device draws the opening together, giving nature a chance to repair, is false, misleading and deceptive as to any inguinal rupture, for the reasons stated hereinabove in Paragraphs Twenty-Two, Twenty-Three, and Twenty-Nine. The remaining representations, except that the Dobbs Truss is different, have not been proven to be false, misleading or deceptive, for the reasons stated hereinabove in Paragraphs Twenty-Four and Twenty-Six as to reducible rupture, but are found to be false as to non-reducible rupture, for the reasons stated in Paragraph Nineteen, above. The representation that the Dobbs Truss is different has not been proven to be false, misleading or deceptive in any respect.

PAR. 35. Respondent John C. Dobbs, trading as Dobbs Truss Company and as Dobbs Truss Sales Company of the Western States, has disseminated, as found in Paragraph Eighteen, supra, advertisements in newspapers representing that the Dobbs Truss when used in rupture cases:

- (1) Holds muscles together;
- (2) Does not spread muscles;
- (3) Keeps rupture tightly closed at all times.

The first and third of these representations are found to be false, misleading and deceptive as to any inguinal hernia, for the reasons stated in Paragraphs Twenty-Two and Twenty-Eight, supra. The second has not been proven to be false, misleading or deceptive as to reducible hernia, for the reasons stated in Paragraph Twenty-Six, but is found to be false as to non-reducible hernia in accordance with Paragraph Nineteen, supra.

PAR. 36. Respondent George R. Gardner, trading as Dobbs Truss Co., has disseminated, as found in Paragraph Eighteen, supra, a circular and newspaper advertisement representing that the Dobbs Truss when used in rupture cases:

- (1) Is a marvelous invention for rupture treatment;
- (2) Is different from other trusses;

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- (3) Does away with all chafing, binding, rubbing and irritation;
- (4) Does away with all constricting pressure;
- (5) Does not spread muscles;
- (6) Helps nature to strengthen muscles and tissues;
- (7) Controls a rupture;
- (8) Is comfortable and secure;
- (9) Does not hinder blood circulation.

Representations numbered 1, 3, 5, 7 and 8 have not been proven to be false, misleading or deceptive as to reducible hernia, for the reasons stated in Paragraphs Twenty-Four, Twenty-Five, Twenty-Six and Thirty herein. Representations numbered 4, 6 and 9 are false, misleading and deceptive as to any inguinal hernia, for the reasons stated in Paragraphs Twenty-Three and Twenty-Four. Representations 1, 3, 4, 5, 6, 7, 8 and 9, inclusive, are false as to non-reducible hernia, for reasons stated in Paragraph Nineteen, above. The allegation that representation numbered 2 is false, misleading and deceptive has not been sustained, for the reasons stated in Paragraph Twenty-Four herein.

PAR. 37. Respondent Henry J. Watkins, Jr., trading as The Dobbs Truss Distributing Company, disseminated, as found in Paragraph Eighteen, supra, advertisements representing that the Dobbs Truss is different and does not spread muscles when used in rupture cases. These have not been proven to be false, misleading or deceptive as to reducible hernia, for the reasons stated in Paragraphs Twenty-Four and Twenty-Six herein. As to nonreducible hernia, the second of these representations is false, for reasons stated in Paragraph Nineteen, above.

PAR. 38. The representations made by respondents as to the effects of using the Dobbs Truss for ruptures or hernias without any qualification, apply equally to reducible and irreducible ruptures and hernias. In the absence of such qualification, those representations which are not true in the case of irreducible rupture or hernia constitute false, misleading and deceptive representations.

PAR. 39. The advertisements which contained the representations hereinabove found to be false, misleading and deceptive were false advertisements. Respondents' use of the aforesaid false, misleading and deceptive representations, disseminated as aforesaid, has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations were true and to induce a substantial number of the public to purchase the Dobbs Truss because of such erroneous and mistaken belief.

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CONCLUSIONS

1. The representations hereinabove found to be false, misleading and deceptive, disseminated by the various respondents as set out, 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.

2. The facts found in Paragraph Seventeen of the above findings as to the facts do not constitute the distributor respondents herein agents of The Dobbs Truss Company, Inc., or Dobbs Truss Sales Company, Inc., so as to make the latter companies legally responsible for the advertisements disseminated by such distributor respondents. However, this should not be construed as holding that The Dobbs Truss Company, Inc., is not legally responsible for the representations contained in the advertisements disseminated by the distributor respondents which advertisements were prepared from advertising mats or circulars furnished by it for that purpose.

ORDER

I.

It is ordered, That respondents *The Dobbs Truss Company, Inc.*, a corporation, its officers, representatives, agents and employees; *Homer C. Dobbs, J. Wood Dobbs, Gladys W. Clark* and *O. C. Dobbs, Jr.*, individually and as officers of said corporation, their representatives, agents and employees; *Ellie H. Vines, Sr.*, trading as Dobbs Truss and Appliance Company, or under any other trade name, his representatives, agents and employees; *Vic L. Brandon*, his representatives, agents and employees; *Scott C. McClelland*, trading as Dobbs Truss Distributing Company, or under any other trade name, his representatives, agents and employees; *Dobbs Truss Company of New York, Inc.*, a corporation, its officers, representatives, agents and employees; *Edward Nolin, Rose Nolin* and *Rosamond Nolin*, individually and as officers of Dobbs Truss Company of New York, Inc., their representatives, agents and employees; *Edward Nolin*, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees; and *Irvin O. Taylor*, trading as The Dobbs Truss, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same name or any other name, do forthwith cease and desist from directly or indirectly:

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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 by implication, that said device will cure, or has cured, any rupture or hernia.

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 device, any advertisement which contains the representation prohibited in Paragraph 1 of Sub-division I of this order.

II.

It is further ordered, That respondents *The Dobbs Truss Company, Inc.*, a corporation, its officers, representatives, agents and employees; *Homer C. Dobbs, J. Wood Dobbs, Gladys W. Clark* and *O. C. Dobbs, Jr.*, individually and as officers of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under that name or any other name, 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 by implication, that said device will keep a rupture tightly closed at all times.

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 device, any advertisement which contains the representation prohibited in Paragraph 1 of Sub-division II of this order.

III.

It is further ordered, That respondents *The Dobbs Truss Company, Inc.*, a corporation, its officers, representatives, agents and employees; *Homer C. Dobbs, J. Wood Dobbs, Gladys W. Clark* and *O. C. Dobbs, Jr.*, individually and as officers of said corporation, their representatives, agents and employees; *Ellie H. Vines, Sr.*, trading as Dobbs Truss and Appliance Company, or under any other trade name, his

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representatives, agents and employees; *Clarence L. Clark*, trading as Dobbs Truss Appliance Company, or under any other trade name, his representatives, agents and employees; *Vic L. Brandon*, his representatives, agents and employees; *Scott C. McClelland*, trading as Dobbs Truss Distributing Company, or under any other trade name, his representatives, agents and employees; *Edward Nolin*, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees; *Irvin O. Taylor*, trading as The Dobbs Truss, or under any other trade name, his representatives, agents and employees; *William L. Powell* and *Ed. F. Hill*, individually and as copartners, trading as The Dobbs Truss Distributing Company, or under any other trade name, their representatives, agents and employees; *George R. Gardner*, trading as Dobbs Truss Co., or under any other trade name, his representatives, agents and employees; *Henry J. Watkins, Jr.*, trading as The Dobbs Truss Distributing Company, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same or any other name, 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 by implication, that said device does not hinder circulation of the blood, does away with all constricting pressure or will help nature help the wearer.

2. 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 by implication, that said device may be worn with security and comfort, does away with all chafing, binding, rubbing, irritation or slipping or is of any value for rupture treatment, unless such representation be expressly limited to reducible hernia or rupture.

3. 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 device, any advertisement which contains any of the representations prohibited in Paragraphs 1 and 2 of Subdivision III of this order.

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IV.

It is further ordered, That respondents The Dobbs Truss Company, Inc., a corporation, its officers, representatives and employees; Homer C. Dobbs, J. Wood Dobbs, Gladys W. Clark and O. C. Dobbs, Jr., individually and as officers of said corporation, their representatives, agents and employees; Ellie H. Vines, Sr., trading as Dobbs Truss and Appliance Company, or under any other trade name, his representatives, agents and employees; Clarence L. Clark, trading as Dobbs Truss Appliance Company, or under any other trade name, his representatives, agents and employees; Vic L. Brandon, his representatives, agents and employees; Lemuel S. Dobbs, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees; Scott C. McClelland, trading as Dobbs Truss Distributing Company, or under any other trade name, his representatives, agents and employees; Dobbs Truss Company of New York, Inc., a corporation, its officers, representatives, agents and employees; Edward Nolin, Rose Nolin and Rosamond Nolin, individually, and as officers of Dobbs Truss Company of New York, Inc., their representatives, agents and employees; Edward Nolin, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees; Irvin O. Taylor, trading as The Dobbs Truss, or under any other trade name, his representatives, agents and employees; George R. Gardner, trading as Dobbs Truss Co., or under any other trade name, his representatives, agents and employees; and Henry J. Watkins, Jr., trading as The Dobbs Truss Distributing Company, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same or any other name, 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 by implication, that said device does not spread muscles, that it does not strut or enlarge the rupture or that it will give relief to the wearer, unless such representation be expressly limited to reducible hernia or rupture.

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

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Federal Trade Commission Act, of said device, any advertisement which contains any of the representations prohibited in Paragraph 1 of Subdivision IV of this order.

V.

It is further ordered, That respondent Vic L. Brandon, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar design or construction or possessing substantially similar properties, whether sold under the same or any other name, 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 by implication, that said device holds the abdominal muscles together.

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 device, any advertisement which contains the representation prohibited in Paragraph 1 of Subdivision V of this order.

VI.

It is further ordered, That respondent *Lemuel S. Dobbs*, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar design or construction or possessing substantially similar properties, whether sold under the same or any other name, 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 by implication, that the Dobbs Truss will free the wearer of his rupture completely and permanently, that it will not slow up the circulation of the blood, that it exerts no constricting pressure, that it will correct a hernia, or that it will restore the muscles to their original state.

2. Disseminating or causing to be disseminated, by means of the United States mails, or by any means in commerce, as "commerce" is

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defined in the Federal Trade Commission Act, any advertisement which represents, directly or by implication, that said device will control a hernia, will not enlarge a rupture, will permit complete freedom of bodily movement without displacement of the truss pad, or will do away with all chafing or binding, unless such representations be expressly limited to reducible hernia or rupture.

3. 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 device, any advertisement which contains any of the representations prohibited by Paragraphs 1 and 2 of Subdivision VI of this order.

VII.

It is further ordered, That respondent *Edward Nolin*, trading as Dobbs Truss Company, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same or any other name, 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 by implication, that said device keeps the rupture tightly closed at all times or that it holds muscles together.

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 device, any advertisement which contains any of the representations prohibited in Paragraph 1 of Subdivision VII of this order.

VIII.

It is further ordered, That respondent *Irvin O. Taylor*, trading as The Dobbs Truss, or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties,

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whether sold under the same or any other name, 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 by implication, that said device draws the opening of the rupture together or that it gives nature a chance to repair the rupture.

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 device, any advertisement which contains any of the representations prohibited in Paragraph 1 of Subdivision VIII of this order.

IX.

It is further ordered, That respondent *John C. Dobbs*, trading as Dobbs Truss Company and as Dobbs Truss Sales Company of the Western States, or under any other trade name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same or any other name, 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 by implication, that said device holds muscles together or keeps the rupture tightly closed at all times.

2. 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 by implication, that said device does not spread muscles, unless such representation be expressly limited to reducible hernia or rupture.

3. 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 device, any advertisement which contains any of the representations prohibited in Paragraphs 1 and 2 of Subdivision IX of this order.

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X.

It is further ordered, That respondent *George R. Gardner*, trading as Dobbs Truss Co., or under any other trade name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of the Dobbs Truss, or any product or device of substantially similar construction or design or possessing substantially similar properties, whether sold under the same or any other name, 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 by implication, that said device helps nature strengthen muscles and tissues.

2. 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 by implication, that said device will control a hernia, unless such representation be expressly limited to reducible hernia or rupture.

3. 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 device, any advertisement which contains any of the representations prohibited in Paragraphs 1 and 2 of Subdivision X of this order.

XI.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent *Dobbs Truss Sales Company, Inc.*

XII.

It is further ordered, That the respondents, with the exception of the Dobbs Truss Sales Company, Inc., shall, within sixty (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.

Complaint

IN THE MATTER OF

GRAND ACADEMY SPORTSWEAR, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5860. Complaint, Mar. 23, 1951—Decision, Apr. 3, 1952

Where a corporation and two officers thereof, engaged in the manufacture and sale and distribution in commerce of wool products, as defined in the Wool Products Labeling Act, including certain ladies' skirts labeled "55% wool 45% rayon"—

- (a) Misbranded said skirts within the intent and meaning of said Act, and the Rules and Regulations promulgated thereunder, in that the aggregate of the woolen fibers therein constituted less than 55% and they contained more than 45% of rayon; and
- (b) Further misbranded said skirts in that the labels affixed thereto did not show the aggregate of all other fibers, each of which constituted less than 5% of the total fiber weight:

Held, That such acts, practices and methods were in violation of said Wool Products Labeling Act and the Rules and Regulations promulgated thereunder, and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

In arriving at said conclusion, due consideration was given to the protestations of good faith and the statements of respondents, contained in their answer, concerning their reputation and standing in the trade as manufacturers of clothing, which, however, were of insufficient cogency to constitute an adequate defense to the present action.

As respects the charge in the complaint that respondents substituted the incorrect tags and labels set forth for the tags which were affixed to the piece goods from which said skirts were made: Said charge was dismissed, under the circumstances and conditions of the instant proceeding, as not properly chargeable as a violation of the Wool Products Labeling Act or of the Rules and Regulations promulgated thereunder or of the Federal Trade Commission Act.

Before *Mr. James A. Purcell*, hearing examiner.

Mr. Russell T. Porter for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Grand Academy Sportswear, Inc., a corporation, and Jack Herbst and Robert Coffield, individually and as