

IN THE MATTER OF
THE IRVING DREW CORPORATION

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

Docket 5946. Complaint, Jan. 22, 1952—Decision, July 15, 1952

An "orthopedic" shoe, in the medical profession, is understood to be one which is specifically designed and constructed to cure, correct or improve particular abnormalities, diseases or disorders of the feet, and is usually prescribed by an orthopedic specialist of the medical profession after a thorough physical examination of the individual involved, and such a shoe, sometimes also referred to as a "health" shoe, is likewise regarded as thus specially designed for the particular individual.

Despite similarities in type, the foot deformities or abnormalities of particular individuals vary, and may not even be the same as between the two feet of the same individual; and where, after proper examination and diagnosis, it is determined the treatment of the deformity, disease or abnormality of a particular individual requires special orthopedic shoes or devices, these are prescribed by the physician to meet his particular needs, but in many cases where an individual's foot condition has resulted from wearing improper shoes and has not become sufficiently aggravated to require the wearing of special orthopedic shoes or devices for corrective purposes, the physician may advise merely that the individual change to a standard well-fitted stock shoe of good construction.

Abnormalities and diseases of the feet result in some cases from causes residing in the feet and in others from causes which have a systemic origin, such as arteriosclerosis, circulatory insufficiency, arthritis or diabetes, in which event the medication or treatment of other parts of the body, without the wearing of special types of shoes or devices, may be required.

Even where the source of foot trouble lies primarily in the feet the treatment indicated may consist of exercise or other method which involves no special shoes or shoe devices.

Where the course of treatment revolves about the shoes, it may take the form of a special cushion, wedge, arch support or similar device or special orthopedic shoe prescribed by a physician to meet the particular needs of the individual, and no one shoe, and particularly no standard stock shoe, can assure balanced foot function or establish or maintain the health of the feet and the general health, or cause foot troubles to disappear, or afford relief from the various abnormalities, disorders and diseases of the feet.

Where a corporation engaged in the manufacture and interstate sale and distribution of shoes for women, designated as "The Drew Arch-Rest Shoe" and "Drew Cushion-Flex Shoes" and sold by retail stores to the general public—

- (a) Represented through use of the words "orthopedic" and "health" to describe its shoes and their construction and the last on which they were made, in statements on labels attached thereto and on containers, and in advertise-

ments in newspapers, catalogues, cards, folders and circulars, directly or by implication, that its shoes were specially designed and constructed so as to cure, correct or improve the particular abnormalities, diseases or disorders of the feet of the individuals who purchased them;

The facts being that while its shoes were well constructed they did not differ substantially from any other stock shoe of good construction and could not be considered to be orthopedic or health shoes; and

- (b) Represented as aforesaid that the wearing of its shoe would afford balanced foot function and would establish and maintain the health of the feet and the general health, and that the wearing of its "Cushion-Flex" shoes would afford relief for tired, tender or aching feet, and for bunion and callous pains, and would cause foot troubles to disappear;

The facts being that the only instance where the wearing of its shoes would have any effect on any disorders or discomforts of the feet would be where the particular foot condition of the individual was caused by wearing improperly constructed or improperly fitted shoes, and had not become sufficiently aggravated to require any treatment other than a change to a properly fitted shoe of good construction; and that even in such instance its said shoes would not necessarily afford adequate relief, and in cases in which the feet did not require the specific types of support they provided, might adversely affect the feet;

With tendency and capacity to mislead a substantial portion of the purchasing public into the mistaken belief that said representations were true, and thereby induce purchase of substantial quantities of its shoes; and with result of placing in the hands of dealers a means whereby they might mislead the purchasing public:

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

As respects respondent's contention that the terms "orthopedic" and "health" had, through long and general usage, acquired a different secondary meaning, namely, that the shoes met certain basic standards of good construction so as to promote the general health of the feet as distinguished from shoes intended to correct, improve or cure particular diseases, abnormalities or disorders: Respondent offered no evidence or testimony in support of its contention, there was no substantial testimony in the record to establish a different understanding, and respondent's contention was clearly belied by its own advertising matter, which included such statements as "designed and adapted to fit problem feet", etc.

Before *Mr. John Lewis*, hearing examiner.

Mr. B. G. Wilson and *Mr. John M. Doukas* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Irving Drew

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Corporation, a corporation, hereinafter referred to as respondent, has 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 Irving Drew Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Ohio. Its office and principal place of business is located at Lancaster, Ohio.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the manufacture, sale and distribution in commerce of shoes for women designated as "The Drew Arch Rest Shoe" and "Drew Kushion-Flex Shoes." They are sold by retail stores to any and all persons who desire them for their use.

PAR. 3. The respondent causes and has caused its said shoes, when sold, to be transported from its said place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in the sale of said shoes in commerce is, and has been, substantial.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its said shoes, respondent has made various statements and representations concerning the nature and usefulness of its said shoes by means of labels attached to the shoes, statements on the cartons in which the shoes are contained, advertisements in newspapers, catalogs, cards, folders and circulars. Among and typical of such statements and representations in said advertisements are the following:

Drew footwear * * * the smartest health shoe * * * with Drew's exclusive orthopedic features.

Drew shoes are * * * made over * * * orthopedic foot-health lasts.

Drew shoes are * * * orthopedically designed * * *.

* * * a scientifically designed steel shank for balanced foot function * * * and other orthopedic features.

Mary * * * a splendid orthopedic shoe.

The Flare * * * orthopedic construction.

Meteor * * * orthopedic shoe.

The Oliver * * * orthopedic construction.

Walker * * * orthopedic construction.

Shoes by Drew are made on exclusive Basic and Orthopedic lasts.
Constructed for foot health.

Spring in your step * * * vibrant health * * * The essence of youth * * *
Preserve it with Drew shoes.

Kushion-Flex shoes by Drew * * * relieve callous pain, tired aching feet.

* * * will comfort your tired and tender feet * * * ease your callous and
bunion pains * * * in Kushion-Flex shoes by Drew.

Women who are suffering from tired and tender feet or from callous and
bunion pains will be your loyal customers forever.

Foot troubles disappear.

PAR. 5. Through the use of the word "health" to describe its shoes, respondent has represented, directly and by implication, that the said shoes are constructed in such a manner that their use will prevent and cure diseases and abnormalities of the feet, will keep the feet healthy, prevent the development of abnormalities and deformities of the feet and correct all disorders of the feet which may be present.

PAR. 6. The said representations are untrue. In truth and in fact the use of the said shoes will not prevent or cure diseases or abnormalities of the feet, keep the feet healthy, prevent the development of abnormalities, or deformities, or correct any disorders of the feet. Said shoes cannot be properly or truthfully designated as health shoes or as possessing health features.

PAR. 7. Through the use of the words "orthopedic," "orthopedic features," "orthopedic construction," and "orthopedic lasts" to describe its shoes, as set forth above, respondent has represented, directly and by implication, that the said shoes are specially designed to, and will prevent and correct deformities, diseases and disorders of the feet.

PAR. 8. The said representations are untrue. In truth and in fact the respondent's said shoes are stock shoes and not orthopedic shoes and are not so constructed as to, and will not, prevent or correct deformities, diseases or disorders of the feet.

PAR. 9. Through the use of the additional statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly and by implication, that the wearing of Drew shoes results in balanced foot function, and will establish and maintain the health of the feet and the general health.

PAR. 10. The said representations are untrue. The wearing of Drew shoes does not give the wearer balanced foot function, and will not establish or will not maintain the health of the feet or the general health. In truth and in fact respondent's shoes are merely stock shoes, made by quantity production methods, and, while they may contain some features not found in some other stock shoes, the effect of these features upon the feet in the prevention or correction of foot ailments is insignificant.

PAR. 11. Through the use of the representations and claims hereinabove set forth, and others similar thereto not specifically set out herein, with particular reference to respondent's "Kushion-Flex" shoes, respondent has represented, directly and by implication, that the wearing of "Kushion-Flex" shoes affords relief for feet which are tired, tender or aching and from the pains incident to bunions and callouses, and that any foot troubles which the wearer may have will disappear.

PAR. 12. The said representations are untrue. In truth and in fact, the wearing of "Kushion-Flex" shoes does not relieve tired, tender or aching feet, nor the pains incident to bunions or callouses, and does not cause foot troubles which the wearer may have to disappear.

PAR. 13. The use by respondent of the foregoing false, deceptive and misleading statements and representations with respect to its shoes has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's shoes, and has placed in the hands of dealers in said shoes means and instrumentalities whereby they may deceive and mislead the purchasing public in the respects stated herein.

PAR. 14. The aforesaid acts and practices of respondent, 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

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated July 15, 1952, the initial decision in the instant matter of Hearing Examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 22, 1952, issued and subsequently served its complaint in this proceeding upon respondent, The Irving Drew Corporation, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation

of the provisions of said Act. Said respondent filed its answer to the complaint herein but failed to appear at the time and place fixed for hearing. At said hearing testimony and other evidence in support of the allegations of the complaint were introduced before the above-named 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. Thereafter the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, testimony and other evidence, proposed findings as to the facts and conclusions presented by counsel in support of the complaint (respondent having been advised of its right to file such proposed findings and conclusions but having failed to do so), and oral argument not having been requested; and said hearing examiner having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, the Irving Drew Corporation, is a corporation organized and existing under and by virtue of the laws of the State of Ohio. Its office and principal place of business is located at Lancaster, Ohio.

PAR. 2. Respondent is now, and has been for more than two years last past, engaged in the manufacture, sale, and distribution in commerce of shoes for women designated as "The Drew Arch Rest Shoe" and "Drew Kusion-Flex Shoes." They are sold by retail stores to the general public.

PAR. 3. Respondent causes and has caused its said shoes, when sold, to be transported from its said place of business in the State of Ohio to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in its said shoes in commerce between and among the various States of the United States and in the District of Columbia. Respondent's volume of business in the sale of said shoes in commerce is, and has been, substantial.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its said shoes, respondent has made various statements and representations concerning the nature and usefulness of its said shoes by means of labels attached to the shoes, statements on the cartons in which the shoes are contained, advertisements

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in newspapers, catalogs, cards, folders and circulars. Among and typical of such statements and representations in said advertisements are the following:

Drew footwear * * * the smartest health shoe * * * with Drew's exclusive orthopedic features.

Drew shoes are * * * made over * * * orthopedic foot-health lasts.

Drew shoes are * * * orthopedically designed * * *.

* * * a scientifically designed steel shank for balanced foot function * * * and other orthopedic features.

Mary * * * a splendid orthopedic shoe.

The Flare * * * orthopedic construction.

Meteor * * * orthopedic shoe.

The Oliver * * * orthopedic construction.

Walker * * * orthopedic construction.

Shoes by Drew are made on exclusive Basic and Orthopedic lasts.

Constructed for foot health.

Spring in your step * * * vibrant health * * * The essence of youth * * * Preserve it with Drew shoes.

Kushion-Flex shoes by Drew * * * relieve callous pain, tired aching feet.

* * * will comfort your tired and tender feet * * * ease your callous and bunion pains * * * in Kushion-Flex shoes by Drew.

Women who are suffering from tired and tender feet or from callous and bunion pains will be your loyal customers forever.

Foot troubles disappear.

PAR. 5. In the medical profession an "orthopedic" shoe is understood to be one which is specially designed and constructed to cure, correct, or improve particular abnormalities, diseases, or disorders of the feet. It is usually prescribed by an orthopedic specialist of the medical profession after a thorough physical examination of the individual involved. A substantial part of the consuming public likewise regards an "orthopedic" shoe, sometimes also referred to as a "health" shoe, as one which is specially designed to cure, correct, or improve the particular abnormalities, diseases, and disorders of the feet from which the individual is suffering.

In its answer respondent avers, in effect, that the terms "orthopedic" and "health" have through long and general usage in the industry acquired a secondary meaning, other than as above indicated. Although the precise nature of this secondary meaning is not clear from the pleadings, respondent apparently contends that these terms are understood to refer to shoes which meet certain basic standards of good construction so as to promote the general health of the feet, as distinguished from shoes intended to correct, improve, or cure the particular diseases, abnormalities, or disorders of the feet of the individuals purchasing same. However, respondent offered no evidence or testimony at the hearing in support of its contention. Not only

is there substantial testimony in the record establishing a different understanding, but respondent's contention, in this respect, is clearly belied by its own advertising matter. Thus, the following statements are made by it:

Shoes by Drew are designed and adapted to fit problem feet.

Drew's Basic Lasts take care of a very, very large percent of problem feet.

Proper shoes for "your" feet must meet your personal needs.

Your foot requires a specific last—a "sculpture-of-your-foot"—Drew has it. There is a Drew Shoe made for your foot.

It is therefore clear from the record, and it is so found, that through the use of the words "orthopedic" and "health" to describe its shoes, the construction thereof, and the lasts on which they are made, the respondent has represented, directly or by implication, that its shoes are specially designed and constructed so as to cure, correct, or improve the particular abnormalities, diseases, or disorders of the feet of the individuals purchasing such shoes.

PAR. 6. Through the use of the statements set forth in Paragraph Four hereof and others similar thereto, respondent has represented, directly or by implication, that the wearing of its shoes will assure balanced foot function and will establish and maintain the health of the feet and the general health, and that the wearing of its "Kushion-Flex" shoes will afford relief for feet which are tired, tender, or aching, and from the pains incident to bunions and callouses, and will cause foot troubles to disappear.

PAR. 7. The foregoing representations made by respondent in connection with its shoes are false and misleading:

(a) Respondent's shoes are not orthopedic or health shoes, but are ordinary stock shoes. An orthopedic or so-called health shoe is one which is specially designed to cure, correct, or improve the abnormalities, diseases, or disorders of the foot of a particular individual. Such a shoe is ordinarily prescribed by an orthopedic physician after a thorough physical examination of the individual to determine the cause of his particular foot trouble. Despite similarities in type, the foot deformities or abnormalities of particular individuals vary and are not exactly the same in any two individuals. There may even be differences between the condition of the two feet of the same individual. Where, after proper examination and diagnosis, it is determined that treatment of the deformity, disease, or abnormality of a particular individual requires special orthopedic shoes or devices, these are prescribed by the physician to meet the particular needs of the individual. In many cases where the individual's foot condition has resulted from wearing improper shoes and has not become sufficiently aggravated to require the wearing of special orthopedic shoes or

devices for corrective purposes, the physician may advise merely that the individual change to a standard, well-fitted stock shoe of good construction. Such a shoe is not, however, an orthopedic or health shoe. Although respondent's shoes are well constructed, they do not differ substantially from any other stock shoe of good construction, and cannot be considered to be orthopedic or health shoes.

(b) Respondent's shoes will not result in balanced foot function and will not establish or maintain the health of the feet or the general health; nor will the wearing of its "Kushion-Flex" shoes afford relief from feet which are tired, tender, or aching, or from the pains incident to bunions and callouses, or cause foot troubles to disappear.

Abnormalities and diseases of the feet result from a variety of causes. In some cases the cause of the difficulty may reside in the feet, while in others it may have a systemic origin resulting from such conditions as arteriosclerosis, circulatory insufficiency, arthritis or diabetes. To ascertain the cause, a proper diagnosis must be made by a competent medical authority. Where the cause of the foot trouble is systemic in origin, it may require medication or treatment of other parts of the body and may not require the wearing of special types of shoes or devices. Even where the source of the trouble lies primarily in the feet, the treatment indicated may consist of exercise, medication, braces, strapping, surgery, or other modes of treatment not involving special shoes or shoe devices. In those instances where the course of treatment revolves about the shoes it may take the form of a special cushion, wedge, arch support, or similar device or a special orthopedic shoe, prescribed by a physician to meet the particular needs of the individual. No one shoe, and particularly no standard stock shoe, can assure balanced foot function or establish or maintain the health of the feet and the general health, or cause foot troubles to disappear, or afford relief from the various abnormalities, disorders, and diseases of the feet.

The only instance where the wearing of respondent's shoes would have any effect on any disorders or discomforts of the feet would be where the particular foot condition of the individual was caused by wearing improperly constructed or improperly fitted shoes and had not become sufficiently aggravated to require any treatment other than a change to a properly fitted shoe of good construction. Even in such instance respondent's shoes, even though of good construction, would not necessarily afford adequate relief and, in some instances, might adversely affect the feet. Thus, its "Arch Rest" and "Kushion-Flex" shoes contain a form of arch support and the latter shoe contains a special heel cushion, which devices act as a crutch and prevent proper

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exercise of foot muscles not requiring these specific types of support. Only where by accident the foot of the particular individual required the types of support contained in these shoes would they help promote the health of the foot and exercise any salutary effect on the general health.

PAR. 8. The use by respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its shoes has had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's shoes, and has placed in the hands of dealers in said shoes a means and instrumentality whereby they may deceive and mislead the purchasing public in the respects stated herein.

CONCLUSION

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

ORDER

It is ordered, That the respondent, the Irving Drew Corporation, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's shoes designated "The Drew Arch Rest Shoe" and "Drew Cushion-Flex Shoe" or any other shoe of similar construction or performing similar functions irrespective of the designation applied thereto, do forthwith cease and desist from:

1. Using the words "orthopedic" or "health" or any other word or term of similar meaning, alone or in combination with any other word or words, to designate, describe, or refer to respondent's shoes, or representing in any other manner that the wearing of respondent's shoes will cure, correct, or improve the diseases, disorders, or abnormalities of the feet of the individuals purchasing such shoes.

2. Representing, directly or by implication, that the wearing of said shoes will assure balanced foot function or will establish or maintain the health of the feet or the general health.

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3. Representing, directly or by implication, that the wearing of respondent's "Kushion-Flex" shoes relieves tired, tender, or aching feet, or the pain incident to bunions or callouses, or causes foot troubles to disappear.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist [as required by said declaratory decision and order of July 15, 1952].

Syllabus

IN THE MATTER OF
DR. HISS SHOES, INC.COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 5947. Complaint, Jan. 22, 1952—Decision, July 15, 1952*

An orthopedic shoe is one which is especially designed to cure, correct or improve the abnormalities, diseases, or disorders of the feet of a particular individual.

Despite similarities in type, the foot troubles of particular individuals vary and are not exactly the same in two individuals, and there may even be differences between the condition of the two feet of the same individual, so that it ordinarily requires an orthopedic physician to determine what particular type of orthopedic shoe or device, if any, is required to meet the individual case.

A standard stock shoe, even though of good construction, is not an orthopedic shoe and cannot be expected to deal effectively with the myriad of foot conditions affecting the individuals purchasing such shoes, and stock shoes will not afford a cure or give effective relief in those instances where a special orthopedic shoe or device is required, aside from the fact that in many cases foot troubles are a manifestation of some systemic disorder requiring treatment of other parts of the body, where no type of shoe can be expected to be of help, and where the proper determination of the cause of trouble and the prescription of effective relief requires thorough physical examination and diagnosis by a competent physician.

Where a corporation engaged in the manufacture and interstate sale and distribution of its "Dr. Hiss Balanced Shoes" for women sold by retail stores to the general public; through statements on labels on the cartons containing its said shoes and in catalogs, cards, folders, and circulars, directly and by implication—

- (a) Represented that the purchaser of its said shoes received benefits comparable to those derived from personal treatment and prescription at a competent foot clinic; the facts being its said shoes were stock shoes and could not assure the purchaser benefits comparable to those obtained from personal attendance at such a clinic where he would receive a complete examination, including laboratory and X-ray studies, if necessary, and where, if a special shoe or device was required, it would be prescribed by a competent physician to meet his specific needs;
- (b) Falsely represented that the wearing of its said shoes gave a proper distribution of the body weight through the different parts of the feet and resulted in better foot function, body balance, and posture;
- (c) Falsely represented that the wearing of said shoes maintained the health of healthy feet and would improve the health of the feet and the general health, would eliminate pressure and tension, and exercise the muscles of the feet and alleviate foot troubles and the discomfort thereof;
- (d) Represented that support for the feet was necessary and would be properly furnished by the wearing of its said shoes; the facts being that such sup-