

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-

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port, outside of that given by any well-constructed, well-fitted shoe, is unnecessary; that where special support is required in individual cases, its stock shoes would not furnish it; and that where such support is necessary it should be prescribed to fit the foot needs of the particular individual;

- (e) Represented through the use of the term "cuboid balance" to describe the shank used in its shoes and statements made in connection therewith, that said shank influenced the position or action of the cuboid bone; and that the wearing of said device would beneficially affect the functioning of the foot and give effective support thereto;

The facts being positioning of the cuboid bone is not commonly encountered, and, where such a condition existed, said "balancer" would not provide sufficient support for said bone to give any effective relief; and

- (f) Falsely represented directly and by implication through the use of the word "orthopedic" to describe certain of its said shoes, that they were especially designed to and would cure, correct, or improve the particular deformities, diseases and disorders of the feet of the individuals who purchased the same; With tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that such representations were true, and thereby induce purchase of substantial quantities of its said shoes; and with the result of placing in the hands of dealers a means whereby they might mislead the purchasing public in the aforesaid respects:

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.

Although in its answer respondent alleged that by common usage in the industry its shoes were considered to be orthopedic typed, no proof was offered by it at the hearing to establish that there was an accepted secondary understanding of the term other than as found above.

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 Dr. Hiss Shoes, Inc., 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, Dr. Hiss Shoes, Inc., 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 com-

merce of shoes for women designated as "Dr. Hiss Balanced 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. 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 on the cartons in which the shoes are contained, catalogs, cards, folders and circulars. Among and typical of such statements and representations contained in said advertisement are the following:

(Name of Dealer) brings the benefits of America's Greatest Foot Clinic to you in Dr. Hiss Balanced Shoes.

The Dr. Hiss Shank (cuboid balancer) contained within the insole distributes weight properly, and encourages natural foot function—the basis of this great clinic-tested shoe's comfort and correctness. You will benefit from better balance, poise and walking comfort in Dr. Hiss Shoes.

Dr. Hiss shoes extend to you "balanced" support.

Keep your feet healthy.

A shoe developed for foot health.

Better foot health through better foot function is the promise which goes with every purchase of Dr. Hiss shoes.

Correct foot function and sound health go hand in hand.

Correct shoe for foot function and comfort should meet these requirements:

Elimination of pressure and tension,

Distribution of weight,

Exercise of muscles,

Protection and support.

The Dr. Hiss shoe is that kind of a shoe.

They scientifically ease and aid troubled feet.

Mary * * * long inside orthopedic counter * * * a splendid orthopedic shoe
* * * an elemental orthopedic style.

Plaza * * * (orthopedic constructed) long orthopedic counter * * * a modified orthopedic style.

Clinic * * * a correct orthopedic shoe.

PAR. 5. Through the use of the statements and claims hereinabove set forth and others of similar import not specifically set out herein, respondent has represented, directly and by implication, that the

purchaser of "Dr. Hiss Balanced Shoes" receives benefits comparable to those derived from personal treatment and prescription of shoes at a competent foot clinic; that the wearing of Dr. Hiss shoes gives a proper distribution of the body weight through the different parts of the feet, causes the feet to function more normally, improves the functioning of the feet and results in better body balance and posture; that the wearing of said shoes maintains continued health for healthy feet and will improve the health of the feet and the general health; that wearing said shoes will eliminate pressure and tension, exercise the muscles of the feet and alleviate foot trouble of any kind and the discomforts thereof; that support for the feet is necessary and will be furnished properly by wearing Dr. Hiss Balanced Shoes.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. 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. The benefits obtained by personal attendance at a properly conducted foot clinic are above and beyond the mere fitting of a pair of Dr. Hiss stock shoes. The wearing of Dr. Hiss shoes has no beneficial effect upon the distribution of the body weight through the different parts of the feet and does not cause the feet to function more normally, nor will they have any influence upon the body balance or improve the posture. The wearing of said shoes will not assure continued health in healthy feet nor will they improve the health of the feet or the general health. The wearing of said shoes will not eliminate pressure and tension and will not exercise the muscles of the feet. The wearing of respondent's shoes will not alleviate foot troubles of any kind or discomforts incident thereto. "Support" of the feet is usually not necessary, and in those instances in which it is, Dr. Hiss shoes cannot be relied upon to furnish the support needed to meet the requirements of the individual case.

PAR. 7. Through the use of the term "cuboid balancer" to describe the shank used in the said shoe, as set forth above, respondent has represented, directly and by implication, that the said shank influences the position or action of the cuboid bone.

PAR. 8. The said representation is untrue. In truth and in fact the said shank or "cuboid balancer" has no influence upon the position or action of the cuboid bones of the wearer of said shoes.

PAR. 9. Through the use of the word "orthopedic" to describe its "Mary," "Plaza" and "Clinic" shoes, as set forth above, respondent has represented, directly and by implication, that the said shoes are

especially designed to, and will, prevent and correct deformities, diseases and disorders of the feet.

PAR. 10. The said representation is untrue. In truth and in fact the respondent's said "Mary," "Plaza" and "Clinic" 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. 11. 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 were 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. 12. 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, Dr. Hiss Shoes, Inc., 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

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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, Dr. Hiss Shoes, Inc., 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 "Dr. Hiss Balanced Shoes." They are sold by retail stores to the general public.

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. 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 on the cartons in which the shoes are contained, catalogs, cards, folders and circulars. Among and typical of such statements and representations are the following:

(Name of Dealer) brings the benefits of America's Greatest Foot Clinic to you in Dr. Hiss Balanced Shoes.

The Dr. Hiss Shank (cuboid balancer) contained within the insole distributes weight properly, and encourages natural foot function—the basis of this great clinic-tested shoe's comfort and correctness. You will benefit from better balance, poise and walking comfort in Dr. Hiss shoes.

Dr. Hiss shoes extend to you "balanced" support.

Keep your feet healthy.

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A shoe developed for foot health.

Better foot health through better foot function is the promise which goes with every purchase of Dr. Hiss shoes.

Correct foot function and sound health go hand in hand.

A correct shoe for foot function and comfort should meet these requirements:

Elimination of pressure and tension

Distribution of weight

Exercise of muscles

Protection and support

The Dr. Hiss shoe is that kind of a shoe.

They scientifically ease and aid "troubled" feet.

Mary * * * long inside orthopedic counter * * * (a splendid orthopedic shoe) * * * An elemental orthopedic style.

Plaza * * * (orthopedic construction) long orthopedic counter * * * a modified orthopedic style.

Clinic * * * a correct orthopedic shoe.

PAR. 5. Through the use of the statements and claims hereinabove set forth, and others of similar import not specifically set out herein, respondent has represented, directly and by implication, that the purchaser of "Dr. Hiss Balanced Shoes" receives benefits comparable to those derived from personal treatment and prescription at a competent foot clinic; that the wearing of Dr. Hiss shoes gives a proper distribution of the body weight through the different parts of the feet and results in better foot function, body balance, and posture; that the wearing of said shoes maintains the health of healthy feet, and will improve the health of the feet and the general health; that the wearing of such shoes will eliminate pressure and tension, exercise the muscles of the feet, and alleviate foot troubles and the discomforts thereof; that support for the feet is necessary and will be properly furnished by wearing Dr. Hiss Balanced Shoes.

PAR. 6. The aforesaid statements and representations are false, misleading, and deceptive. In truth and in fact, respondent's shoes are stock shoes and cannot assure to the purchaser thereof benefits comparable to those obtained from personal attendance at a competent foot clinic where he will receive a complete examination, including clinical examination and laboratory and X-ray studies, where necessary, and where if a special shoe or device is required it will be prescribed by a competent physician to meet his specific needs. The wearing of respondent's shoes will have no significant beneficial effect upon the distribution of body weight through the different parts of the feet nor will it assure better foot function, better body balance or better posture. The wearing of said shoes will not assure continued health in healthy feet nor will it have any significant effect in improving the health of the feet or the general health. The wearing of such shoes will not assure the elimination of pressure or tension, or the

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alleviation of foot troubles or the discomforts incident thereto, nor will it exercise the muscles of the feet. Support for the feet, outside of that given by any well-constructed, well-fitted shoe, is unnecessary, and where special support is required in individual cases respondent's stock shoes will not furnish it.

PAR. 7. Through the use of the term "cuboid balancer" to describe the shank used in its shoes and the statements made in connection therewith, as above set forth, respondent has represented, directly or by implication, that the said shank influences the position or action of the cuboid bone and that the wearing of said device in its shoes will beneficially affect the functioning of the foot and give effective support thereto.

PAR. 8. The said representations are false, misleading and deceptive. In truth and in fact said shank or "cuboid balancer" has no significant effect upon the position or action of the cuboid bone, will not beneficially affect the functioning of the foot, and will not furnish effective support to the foot where required. The cuboid bone, which said shank is apparently intended to support, is one of the smaller bones located on the outer ball of the foot and displacement or malpositioning of such bone is not commonly encountered. In those instances where such condition does exist the "cuboid balancer" or shank contained in respondent's shoes will not provide sufficient support for the cuboid bone to give any effective relief. Moreover, as above found, most feet do not require any special support in the shoe. Where special support is necessary it should be prescribed to fit the foot needs of the particular individual.

PAR. 9. Through the use of the word "orthopedic" to describe its "Mary," "Plaza," and "Clinic" shoes, as above set forth, respondent has represented, directly and by implication, that the said shoes are especially designed to, and will, cure, correct, or improve the particular deformities, diseases, and disorders of the feet of the individuals purchasing same. This is the understanding of the term "orthopedic" in the medical profession and among a substantial part of the consuming public. Although in its answer respondent alleges that by common usage in the industry its shoes are considered to be orthopedic types, no proof was offered by it at the hearing to establish that there is an accepted secondary understanding of this term other than as found above.

PAR. 10. The said representation is false, misleading, and deceptive. In truth and in fact respondent's said "Mary," "Plaza," and "Clinic" shoes are stock shoes and not orthopedic shoes and the wearing of said shoes will not effectively cure, correct, or improve disorders, diseases, and deformities of the feet. As found above, 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 any two individuals. There may even be differences between the condition of the two feet of the same individual. For this reason it ordinarily requires an orthopedic physician to determine what particular type of orthopedic shoe or device, if any, is required to meet the needs of 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. Not only will such stock shoes not afford a cure or give effective relief in those instances where a special orthopedic shoe or device is required, but there are many cases where foot troubles are merely a manifestation of some systemic disorder requiring treatment of some other parts of the body and where no type of shoe can be expected to be of any help. In order to properly determine the cause of the trouble and prescribe effective relief in such case a thorough physical examination and diagnosis by a competent physician is required.

PAR. 11. 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 were 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, Dr. Hiss Shoes, Inc., 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 "Dr. Hiss Balanced Shoes" or any other shoe of similar

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construction or performing similar functions irrespective of the designation applied thereto, do forthwith cease and desist from:

1. Representing, directly or by implication, that a purchaser of respondent's shoes will receive benefits comparable to those derived from personal treatment or prescription of shoes at a competent foot clinic.

2. Representing, directly or by implication that the wearing of respondent's shoes will beneficially affect the distribution of body weight or result in better foot function, body balance, or posture.

3. Representing, directly or by implication, that respondent's shoes will assure continued health in healthy feet or will improve foot health or the general health or will alleviate foot troubles or the discomforts thereof.

4. Representing, directly or by implication, that the wearing of said shoes will eliminate pressure or tension or exercise the muscles of the feet.

5. Representing, directly or by implication, that support for the feet is necessary unless representation be limited to the categories of foot disorders in which support for the feet is required, or representing, directly or by implication, that the wearing of respondent's shoes will furnish the support needed in the individual case.

6. Representing, directly or by implication, through the use of the term "cuboid balancer" to describe a shank in respondent's shoes, or by any other means, that the said shank will influence the position or action of the cuboid bones of the wearer of said shoes, or that the wearing of said device in its shoes will beneficially affect the functioning of the feet or give effective support thereto.

7. Using the word "orthopedic," alone or in combination with any other word or words, to describe or designate said shoes, or using any other word or words in any manner to represent, directly or by implication, that respondent's shoes will cure, correct, or improve deformities, diseases, or disorders of the feet.

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].

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IN THE MATTER OF
ALBERT H. FISHER ET AL. DOING BUSINESS AS FISHER
& DERITIS

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

Docket 5944. Complaint, Jan. 21, 1952—Decision, July 17, 1952

Sweaters made from wool have for many years held great public esteem and confidence because of their outstanding qualities and, in said connection, camels hair is generally recognized by the public as a type of wool and a highly desirable material for such products.

Sweaters made from rayon fabric so manufactured as to simulate wool in texture and appearance have the appearance and feel of wool and many members of the purchasing public are unable to distinguish between the two types of garments, and some readily accept the rayon sweaters as the wool product.

There is no arbitrary standard of fabric characteristic that has been set up as a criterion to determine the degree of flammability of rayon or brushed rayon and the fact that a garment or fabric is made thereof and has a raised fibrous surface does not necessarily render it especially flammable, a test of each type of material being necessary before the degree of flammability can be definitely determined.

Where two partners engaged in the manufacture and interstate sale and distribution of sweaters of a brushed rayon fabric with a raised fiber surface which resembled wool in texture and appearance, and was invoiced by the manufacturer as being an "especially inflammable"; preceding their discontinuance of business and the taking of various steps to bring about the destruction of the garments involved—

- (a) Set forth, among other things, upon the labels attached to said sweaters and the containers thereof the depiction of a camel and the words "Camel Sportswear", notwithstanding the fact that said products were not made of wool; and
- (b) Without disclosing on the containers the "especially inflammable" character of the sweaters, sold approximately 100 dozen sets to some 70 to 80 "peddlers" located through the several states and in the District of Columbia, who resold them to the public with no such disclosure;

With tendency and capacity to mislead purchasers of said products into the false belief that they were made of camel's hair and were suitable and safe to be worn as wool sweaters ordinarily are, and with the result of placing in the hands of retail distributors of their said product the means correspondingly to mislead members of the consuming public in the aforesaid respects, and thereby into the purchase of said products:

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