

Syllabus

IN THE MATTER OF

SPENCER INCORPORATED

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

Docket 5995. Complaint, May 23, 1952—Decision, June 23, 1953

Where a corporation engaged in the business of making, selling, and distributing its "Spencer Supports," individually designed, cut, and fitted in accordance with the measurements of the wearer as taken by a corsetier in local shops operated by said corporation in various states and cities, or as prescribed by a physician; in advertising in circulars, leaflets, pamphlets, newspapers, magazines, and other periodicals of interstate circulation—

- (a) Falsely represented, directly and by implication, that its said "Spencer Breast Supports" were effective in guarding against breast diseases and guarding health of the breasts generally; would improve circulation in the breasts, and would give the wearer vitality, new and glowing health and energy, a quicker acting mind, and added pep;
 - (b) Represented falsely that said devices would be effective in helping to maintain and restore firmness and contour of the breasts, cause flabby muscles to become firm and trim, and enable the abdomen to regain its natural, healthful flatness;
 - (c) Represented falsely that they would help to prevent tuberculosis of the lungs, cancer of the breasts and abscessed breasts, and were of value in treating cerebral palsy, diabetes, chronic nephritis, anginoid pain due to radiculitis, arthritis, tired feet or nervousness, and would be helpful in preventing pooling of the blood in extremities;
 - (d) Falsely represented that said products would rid the wearer of bulges and posture imperfections, overcome impairment of digestion and elimination due to postural imperfections, promote healthful posture, relieve and correct lordosis and conditions resulting therefrom, maintain spinal balance and give the support intended by nature, put the abdominal organs in position to function normally and raise them to their natural position, and could be relied upon to place equal weight on each of the discs of the spinal column;
 - (e) Represented falsely that sagging or pendulous breasts exert harmful or significant pressure on the heart, lungs, and diaphragm, invite breast diseases, tend to induce scoliosis, and that such diseases and conditions would be relieved, improved, and prevented by respondent's said devices;
 - (f) Represented falsely that said devices were of value as preventives of backache and other back troubles and were effective in relieving, correcting, and eliminating back fatigue, backache, general fatigue, and a tired-out feeling;
- When in fact preventative, corrective, or therapeutic properties of said devices were limited to the measure of support to, and change of position of, the

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parts of the body to which they might be applied at the actual time they were worn:

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

Before *Mr. Earl J. Kolb*, hearing examiner.

Mr. R. P. Bellinger for the Commission.

Mr. Leonard J. Saccio, of New Haven, Conn., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Spencer Incorporated, 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 Spencer Incorporated is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business at 145 Derby Avenue, New Haven 7, Connecticut. The respondent is now, and for some years last past has been, engaged in the business of manufacturing, selling and distributing certain devices, as "device" is defined in the Federal Trade Commission Act, called "Spencer Supports," which are individually designed, cut and fitted in accordance with the measurements of the wearer, as determined by a Spencer corsetier, or as prescribed by a physician. The devices are designed ostensibly to furnish support and corresponding comfort to the abdomen, back, breasts or other parts of the body. The supports are sold principally through local Spencer Corset Shops located in various states and cities thereof, wherein a Spencer corsetier measures the customer and sends the resulting data to respondent's headquarters in New Haven, where the support is manufactured.

In the course and conduct of its aforesaid business, the respondent causes its devices, when thus manufactured and sold, to be transported from its place of business in the State of Connecticut to purchasers thereof, or to its said local corset shops for delivery to the purchasers thereof, located in various other states of the United States and in the District of Columbia. At all times mentioned herein, respondent has maintained a course of trade in said devices in commerce between and

among the various states of the United States and in the District of Columbia. The business which respondent does in said manner is substantial, the gross annual volume thereof being in excess of \$1,000,000.

PAR. 2. In the course and conduct of its aforesaid business, respondent has disseminated and has caused the dissemination of advertisements concerning its said devices by the United States mails and by various 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, directly or indirectly, the purchase of said devices; and respondent has also disseminated and has caused the dissemination of advertisements concerning its said devices by means of circulars, leaflets, pamphlets and advertisements published or caused to be published in various newspapers, magazines and other periodicals of interstate circulation, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said devices in commerce as aforesaid.

PAR. 3. Through the use of said advertisements, respondent has, directly and by implication, represented that: Spencer Breast Supports are effective in guarding against breast diseases, in improving circulation of blood in the breasts, in guarding the health of the breasts, in helping maintain and restore the firmness and contour of the breasts, in restoring tissue tone of sagging breasts, and in preventing tuberculosis of the lungs and cancer of the breasts; sagging or pendulous breasts exert pressure on the heart, lungs and diaphragm, leading to scoliosis, impair circulation of blood and invite breast diseases, which conditions and diseases will be relieved, improved or prevented by wearing a Spencer Support; Spencer Maternity Breast Supports are effective in preventing abscessed breasts and are essential in guiding the breasts back to healthful firmness after childbirth; Spencer Supports will rid the wearer of bulges and posture imperfections, will improve and correct poor posture, and will overcome impairment of blood circulation, digestion and elimination when due to postural imperfections; they will promote healthful posture, relieve and correct lordosis and the conditions resulting from lordosis, will maintain spinal balance and give the support which nature intended, and will place equal weight on each of the discs of the spinal column; the use of said supports will cause flabby muscles to become firm and trim, and will enable the abdomen to regain its natural healthful flatness; Spencer Supports are indicated to put abdominal organs in position to function normally and to raise such organs to their normally natural positions; Spencer Supports offer effective relief in non-

pathological nausea associated with pregnancy; they are effective in treating cerebral palsy, diabetes, chronic nephritis, arthritis, anginoid pain due to radiculitis, tired feet and nervousness, and will help prevent the pooling of blood in extremities; the use of Spencer Supports is therapeutically indicated for normal persons and can be relied upon to avoid backache or prevent future back troubles; Spencer Supports will relieve, eliminate and rid the wearer of such symptoms and conditions as back fatigue, backache, general fatigue, generally run-down health and a tired-out feeling; Spencer Supports will give the wearer vitality, new and glowing health and energy, a quicker acting mind and added pep.

PAR. 4. The aforesaid statements and representations are misleading in material respects and constitute "false" advertisements as that term is defined in the Federal Trade Commission Act. In truth and in fact, Spencer Breast Supports are not effective in guarding against breast diseases, nor in guarding the health of the breasts generally. Respondent's said devices will not improve circulation of blood in the breasts. Wearing said devices will not be effective in helping to maintain or restore the firmness of the breasts, in restoring tissue tone of sagging breasts, nor will they be effective in helping to maintain or restore the contour of the breasts in excess of the support afforded while being worn. They are not effective in preventing tuberculosis of the lungs or cancer of the breasts. Sagging or pendulous breasts do not usually exert any significant pressure on the heart, lungs or diaphragm, have no tendency to induce scoliosis, do not impair circulation of blood in the breasts or invite breast diseases, and such conditions and diseases will not be relieved, improved or prevented by wearing a Spencer Support. Spencer Maternity Breast Supports are not effective in preventing abscessed breasts, and are not essential in guiding the breasts back to healthful firmness after childbirth. Spencer Supports will not rid the wearer of bulges or posture imperfections, nor will they overcome impairment of digestion, regardless of the cause; they will neither improve nor correct poor posture, nor overcome impairment of elimination due to postural imperfections, and they will not exert any influence on bulges or posture in excess of the temporary benefit afforded by pressure or support during the time they are actually being worn; they will not be of any benefit in impairment of blood circulation other than in those cases of hypotension where temporary benefit is afforded by the constriction and pressure while the support is being worn. They will not promote healthful posture, will not relieve or correct lordosis or the conditions resulting from lordosis,

nor will they maintain spinal balance or give the support intended by nature, in excess of the temporary benefit afforded in some cases by the supporting effect of the device while worn. They cannot be relied upon to place equal weight on each of the discs of the spinal column. The use of respondent's devices will not cause flabby muscles to become firm and trim and will not enable the abdomen to regain its natural healthful flatness. Spencer Supports cannot be depended upon to put the abdominal organs in position to function normally, or to raise such organs to their normally natural positions, nor will such supports otherwise promote normal functioning of said organs. The wearing of such supports will not be effective in relieving non-pathological nausea or other type of nausea, either when accompanied by pregnancy or otherwise. Said supports have no value in treating cerebral palsy, diabetes, chronic nephritis, anginoid pain due to radiculitis, tired feet or nervousness, and will not be helpful in preventing the pooling of blood in extremities. They have no therapeutic value in treating arthritis, in excess of the possible temporary relief of pain afforded while the support is being worn. The use of Spencer Supports would be therapeutically worthless for normal persons, and said devices have no value as preventives of backache or other back troubles, in excess of affording support as long as worn. Respondent's devices will not serve to relieve, eliminate or rid the wearer of back fatigue, backache, general fatigue, generally run-down health or a tired-out feeling, in excess of the effect afforded by support in some cases while the device is worn. A Spencer Support will have no effect upon the wearer's vitality, energy, general health, mental alertness or pep, except in those infrequent cases where impairment of said conditions may be attributed to the need of the temporary support derived from the use of such a device while being worn.

In some selected cases, physicians prescribe abdominal supports with beneficial results, but such adjunct measures are only palliative, not curative. Except in such cases thus referred to, respondent's said devices have no usefulness other than providing a measure of support to, and a change of position of, certain parts of the body to which they may be applied during the actual time said devices are worn. When the support is removed, the organs or parts of the body contacted, return to their former positions.

PAR. 5. Respondent, in the course of promoting the sale of its said devices, has used advertising material in the manner aforesaid in which have appeared incomplete, inaccurate and fragmentary quotations from medical and other scientific authorities. Respondent's use of said incomplete, inaccurate and fragmentary quotations has

had the effect of distorting and misrepresenting the meaning and true import of the authors of the respective articles, and the meaning attributed to the medical and other scientific literature in general in the pertinent field.

PAR. 6. The use by respondent of the above referred to advertising representations, disseminated as aforesaid, has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase its said devices.

PAR. 7. 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 June 23, 1953, the initial decision in the instant matter of hearing examiner Earl J. Kolb, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 23, 1952, issued and subsequently served its complaint in this proceeding upon the respondent, Spencer Incorporated, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the filing of respondent's answer to the complaint, hearings were held at which testimony and other evidence in support of, and in opposition to the allegations of the complaint, including a stipulation as to the facts entered into between counsel for the respondent and counsel supporting 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 this proceeding regularly came on for final consideration by said Hearing Examiner on the complaint, the answer thereto and testimony and other evidence, including said stipulation as to the facts, (filing of proposed findings as to the facts and conclusions having

been waived), 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 Spencer Incorporated is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its office and principal place of business at 145 Derby Avenue, New Haven 7, Connecticut. The respondent is now, and for some years last past has been, engaged in the business of manufacturing, selling and distributing certain devices, as "device" is defined in the Federal Trade Commission Act, called "Spencer Supports," which are individually designed, cut and fitted in accordance with the measurements of the wearer, as determined by a Spencer corsetier, or as prescribed by a physician. The devices are designed ostensibly to furnish support and corresponding comfort to the abdomen, back, breasts or other parts of the body. The supports are sold principally through local Spencer Corset Shops located in various States and cities thereof, wherein a Spencer corsetier measures the customer and sends the resulting data to respondent's headquarters in New Haven, where the support is manufactured. In the course and conduct of its aforesaid business, the respondent causes its devices, when thus manufactured and sold, to be transported from its place of business in the State of Connecticut to purchasers thereof, or to its said local corset shops for delivery to the purchasers thereof, located in various other States of the United States and in the District of Columbia. At all times mentioned herein, respondent has maintained a course of trade in said devices in commerce between and among the various States of the United States and in the District of Columbia. The business which respondent does in said manner is substantial, the gross annual volume thereof being in excess of \$1,000,000.

PAR. 2. In the course and conduct of its aforesaid business, respondent has disseminated and has caused the dissemination to the consuming public, as distinguished from the medical profession, of advertisements concerning its said devices by the United States mails and by various 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, directly or indirectly, the purchase of said devices by the consuming public, as distinguished from the medical profession; and respondent has also disseminated and has

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caused the dissemination of advertisements concerning its said devices by means of circulars, leaflets, pamphlets and advertisements published or caused to be published in various newspapers, magazines and other periodicals of interstate circulation, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of its said devices, by the consuming public, in commerce as aforesaid; however, no advertisement of respondent's device is deemed to be false if it is disseminated only to members of the medical profession and contains no false representation of a material fact.

PAR. 3. Through the use of said advertisements, to the said consuming public, respondent has, directly and by implication, represented that: Spencer Breast Supports are effective in guarding against breast diseases, in improving circulation of blood in the breasts, in guarding the health of the breasts, in helping maintain and restore the firmness and contour of the breasts, in restoring tissue tone of sagging breasts, and in preventing tuberculosis of the lungs and cancer of the breasts; sagging or pendulous breasts exert pressure on the heart, lungs and diaphragm, leading to scoliosis, impair circulation of blood and invite breast diseases, which conditions and diseases will be relieved, improved or prevented by wearing a Spencer Support; Spencer Maternity Breast Supports are effective in preventing abscessed breasts and are essential in guiding the breasts back to healthful firmness after childbirth; Spencer Supports will rid the wearer of bulges and posture imperfections, will improve and correct poor posture, and will overcome impairment of blood circulation, digestion and elimination when due to postural imperfections; they will promote healthful posture, relieve and correct lordosis and the conditions resulting from lordosis, will maintain spinal balance and give the support which nature intended, and will place equal weight on each of the discs of the spinal column; the use of said supports will cause flabby muscles to become firm and trim, and will enable the abdomen to regain its natural healthful flatness; Spencer Supports are indicated to put abdominal organs in position to function normally and to raise such organs to their normally natural positions; Spencer Supports offer effective relief in non-pathological nausea associated with pregnancy; they are effective in treating cerebral palsy, diabetes, chronic nephritis, arthritis, anginoid pain due to radiculitis, tired feet and nervousness, and will help prevent the pooling of blood in extremities; the use of Spencer Supports is therapeutically indicated for normal persons and can be relied upon to avoid backache or prevent future back troubles; Spencer Supports will relieve, eliminate and rid

the wearer of such symptoms and conditions as back fatigue, back-ache, general fatigue, generally run-down health and a tired-out feeling; Spencer Supports will give the wearer vitality, new and glowing health and energy, a quicker acting mind and added pep.

PAR. 4. The aforesaid statements and representations are misleading in material respects and constitute "false" advertisements as that term is defined in the Federal Trade Commission Act. In truth and in fact, Spencer Breast Supports are not effective in guarding against breast diseases nor in guarding the health of the breasts generally. Respondent's said devices will not improve circulation of blood in the breasts in excess of the benefit afforded to excessively sagging or pendulous breasts. Wearing said devices will not be effective in helping to maintain or restore the firmness of the breasts, in restoring tissue tone of sagging breasts, nor will they be effective in helping to maintain or restore the contour of the breasts, in excess of the support afforded while being worn. They are not effective in preventing tuberculosis of the lungs or cancer of the breasts. Sagging or pendulous breasts do not usually exert any significant pressure on the heart, lungs or diaphragm, have no tendency to induce scoliosis, do not invite breast diseases, and such conditions and diseases will not be relieved, improved nor prevented by wearing a Spencer Support. Spencer Maternity Breast Supports are not effective in preventing abscessed breasts, and are not essential in guiding the breasts back to healthful firmness after childbirth. Spencer Supports will not rid the wearer of bulges or posture imperfections, and will not overcome impairment of digestion, irrespective of the cause; they will neither improve nor correct poor posture, nor will they overcome impairment of elimination due to postural imperfections, and they will not exert any influence on bulges or posture in excess of the temporary benefit afforded by pressure or support during the time they are actually being worn; they will not be of any benefit in impairment of blood circulation other than in those cases of hypotension where temporary benefit is afforded by the constriction and pressure while the support is being worn. They will not promote healthful posture, will not relieve or correct lordosis or the conditions resulting from lordosis, nor will they maintain spinal balance or give the support intended by nature, in excess of the temporary benefit afforded in some cases by the supporting effect of the device while being worn. They cannot be relied upon to place equal weight on each of the discs of the spinal column. The use of respondent's devices will not cause flabby muscles to become firm or trim, and will not enable the abdomen

to regain its natural healthful flatness. Spencer Supports cannot be depended upon to put the abdominal organs in position to function normally, or to raise such organs to their normally natural positions, nor will such supports otherwise promote normal functioning of said organs, in excess of the benefit afforded in supporting weakened or relaxed abdominal muscles while being worn. Wearing such supports will not be effective in relieving non-pathological nausea or any other type of nausea either when accompanied by pregnancy or otherwise. Respondent's supports have no value in treating cerebral palsy, diabetes, chronic nephritis, anginoid pain due to radiculitis, tired feet or nervousness, and will not be helpful in preventing the pooling of blood in extremities. They have no therapeutic value in treating arthritis in excess of the possible temporary relief of pain afforded while the support is being worn. The use of Spencer Supports is not indicated nor do they possess any preventive value, for normal individuals, in excess of affording proper support as long as worn, in those cases in which the individual customarily wears a support or corset. Respondent's said devices have no value as preventives of backache or other back troubles, in excess of affording proper support as long as worn. Respondent's devices will not serve to relieve, eliminate or rid the wearer of back fatigue, backache, general fatigue, generally run-down health or a tired-out feeling, in excess of the effect afforded by support in some cases while the device is worn. Wearing a Spencer body or breast support will have no effect upon the wearer's vitality, energy, general health, mental alertness or pep, except in those infrequent cases where impairment of said conditions may be attributed to the need of the temporary support derived from the use of such a device while being worn.

In a substantial number of cases, physicians prescribe Spencer Supports for the back, breasts or abdomen as an adjunct in the treatment or the alleviation of symptoms of various diseases of the body, or as a preventive measure particularly in cases of faulty posture. Preventive, corrective or therapeutic properties of said devices are limited, however, to the measure of support to and change of position of such parts of the body to which they may be applied at the actual time said devices are worn.

CONCLUSION

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

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Order

ORDER

It is ordered, That the respondent, Spencer Incorporated, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its Spencer Supports, or any other product of substantially similar composition, design or construction, do forthwith cease and desist from:

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

(a) That wearing a Spencer Breast Support will effectively guard against breast diseases, or will guard the health of the breasts generally.

(b) That wearing a Spencer Breast Support will improve circulation of blood in the breasts in excess of the benefit afforded to excessively sagging or pendulous breasts.

(c) That wearing said devices will be effective in helping to maintain or restore the firmness of the breasts or in restoring tissue tone of sagging breasts.

(d) That wearing said devices will be effective in helping to maintain or restore the contour of the breasts, in excess of the support afforded while being worn.

(e) That wearing said supports will help to prevent tuberculosis of the lungs or cancer of the breasts.

(f) That sagging or pendulous breasts exert harmful or significant pressure on the heart, lungs or diaphragm, invite breast diseases, tend to induce scoliosis, or that such diseases or conditions could be relieved, improved or prevented by wearing a Spencer Support.

(g) That Spencer Maternity Breast Supports will prevent abscessed breasts, or are essential in guiding the breasts back to healthful firmness after childbirth.

(h) That Spencer Supports will rid the wearer of bulges or posture imperfections or will overcome impairment of digestion.

(i) That Spencer Supports will improve or correct poor posture, or overcome impairment of elimination due to postural imperfections, or will exert any influence on bulges or posture in excess of the temporary benefit afforded by pressure or support during the time they are actually being worn.

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(j) That Spencer Supports will be of benefit in any impairment of blood circulation other than those cases of hypotension where temporary benefit is afforded by the constriction and pressure while the device is being worn.

(k) That wearing such a support will promote healthful posture, will relieve or correct lordosis or the conditions resulting from lordosis, will maintain spinal balance or give the support intended by nature, in excess of the temporary benefit afforded in some cases by the supporting effect of the device while worn.

(l) That said supports can be relied upon to place equal weight on each of the discs of the spinal column.

(m) That the use of respondent's devices will cause flabby muscles to become firm or trim, or will enable the abdomen to regain its natural healthful flatness.

(n) That Spencer Supports can be depended upon to put the abdominal organs in position to function normally, or to raise such organs to their normally natural positions, or otherwise promote normal functioning of these organs, in excess of the benefit afforded in supporting weakened or relaxed abdominal muscles while being worn.

(o) That wearing a Spencer Support will effectively relieve non-pathological nausea or any other type of nausea, either in pregnancy or otherwise.

(p) That said devices have any value in treating cerebral palsy, diabetes, chronic nephritis, anginoid pain due to radiculitis, tired feet or nervousness, or will be helpful in preventing the pooling of blood in extremities.

(q) That said devices have any therapeutic value in treating arthritis, in excess of the possible temporary relief of pain afforded while the support is being worn.

(r) That Spencer Support are indicated for or possess any preventive value for normal individuals, in excess of affording proper support as long as worn, in those cases in which the individual customarily wears a support or corset.

(s) That respondent's said devices have any value as preventives of backache or other back troubles, in excess of affording proper support as long as worn.

(t) That wearing a Spencer Support will be effective in relieving, correcting or eliminating back fatigue, backache, general fatigue or a tired-out feeling, in excess of the effect afforded by support in some cases while the device is worn.

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(u) That wearing a Spencer body or breast support will have any effect upon one's vitality, energy, pep, mental alertness or general health, except in those infrequent cases where impairment of said conditions may be attributed to the need of the temporary support derived from the use of such a device while being worn.

(v) That respondent's said devices have any preventive, therapeutic or corrective properties, or that they have any such usefulness other than providing a measure of support to and a change of position of certain parts of the body to which they may be applied during the time the said devices are worn.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said devices by the consuming public, as distinguished from the medical profession, in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's said devices, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

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 June 23, 1953].

IN THE MATTER OF
ELI TEMPKIN AND ALLEN GORDON DOING BUSINESS
AS NATIONAL STORES

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

Docket 6017. Complaint, July 28, 1952—Decision, June 24, 1953

When articles of merchandise, including sewing machines, are exhibited and offered for sale by retailers to the purchasing public, not marked to show foreign origin, or with foreign markings covered or otherwise concealed, such public understands and believes such articles to be wholly of domestic origin.

There is among the members of the purchasing public a substantial number who have a decided preference for products manufactured in the United States over products manufactured in whole or in part in foreign countries, including sewing machines.

The word "Eureka" and other well-known domestic names are the names or parts of the names of, or used as trade names, marks, or brands by, business organizations doing business in the United States, which are and have been well and favorably known to the purchasing public and which are and have been well and long-established in various industries, and there is a preference among members of the purchasing public for products manufactured by such concerns whose identity is connected with the word "Eureka" and other well-known domestic names.

Where two partners engaged in the competitive interstate sale to the purchasing public of sewing machines with heads imported from Japan, on the back of the vertical arm of which the word "Japan" became covered by attachment of a motor, and on the front of some of which a medallion displayed the word so small and indistinct as not to constitute adequate notice that said heads were imported—

- (a) Failed adequately to disclose on their said sewing machine heads that they were manufactured in Japan;
- (b) Falsely represented that they manufactured their sewing machines for sale direct from their factory in the United States to purchasers, through such statements in their advertising as "This is a direct factory savings to you done in hopes that you will aid our present advertising campaign";
- (c) Represented that their product was manufactured by or connected in some way with favorably known American firms through the featured use of such trade or brand names as "Eureka" on the front horizontal arm of the head, and in their advertising matter, and thereby enhanced the belief by the public that said machines were of domestic origin;