

Decision

IN THE MATTER OF
GENERAL SHOE CORPORATIONDECISION AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6001. Complaint, June 17, 1952—Decision, July 13, 1953

Where a corporate manufacturer of shoes, by means of labels on shoes, advertisements in newspapers and magazines of general circulation, folders, pamphlets, and circulars, and through radio broadcasts—

- (1) Represented falsely that the wearing of its "Storybook Shoes" would hold the foot in its natural position, keep it properly aligned, hold it accurately in the shoe, insure its correct growth, provide strong support for the arch, guard against foot ills and provide better balance;
- (2) Represented falsely that the resilient pads at the heel and arch in children's shoes prevented forward skid, gave arch support, cushioned jolts and protected nerve terminals and the delicate nerve-ends in the heel;
- (3) Represented falsely that the wearing of its "Acrobat Shoes" gave growing feet the proper foundation and combination of features for good health; would keep young feet healthy, eliminate pronation of ankles and keep young ankles straight and strong;
- (4) Represented falsely that the wearing of its "Acrobat Safety Shoes" would start children in good walking habits, set the foot in a straight line, give extra ankle support and set the ankle straight; and that the flexible sole of the shoes permitted the building of muscles and strong sound feet; and
- (5) Represented falsely, directly and by implication, through use of the word "health" in connection with its said shoes, that they were so constructed as to possess aforesaid features or qualities;

When in fact all of said shoes were merely stock shoes made by quantity production methods, and while they contained some features not found in some other stock shoes, the effect of such features in the prevention or correction of foot ailments or in aiding the natural development of the feet was insignificant:

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

Before *Mr. Frank Hier*, hearing examiner.

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

Bass, Berry & Sims, of Nashville, Tenn., for respondent.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 17, 1952, issued and subsequently served its complaint in this proceeding upon respondent General Shoe 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. After the service of said complaint and the filing of respondent's answer thereto, hearings were held at which

Findings

50 F. T. C.

testimony and other evidence in support of the allegations of said complaint were introduced before a hearing examiner of the Commission theretofore duly designated by it and named in the "Notice" appended to the complaint at the time of its issuance, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Respondent elected to offer no evidence on its own behalf, except the cross-examination of witnesses produced against it. Thereafter the proceeding regularly came on for final consideration by said hearing examiner on the complaint, the answer thereto, and testimony and other evidence, and said hearing examiner on October 13, 1952, filed his initial decision.

The Commission, having reason to believe that the order contained in said initial decision did not constitute an appropriate disposition of the proceeding, on November 12, 1952, issued and thereafter served upon the parties its order placing the case upon the Commission's own docket for review. Thereafter the Commission, having considered the entire record and having prepared a tentative order, caused copies of the said tentative order to be served upon respondent together with its order issued on March 31, 1953, granting leave to respondent to file, within twenty days after service thereof, objections to the changes in the order continued in the hearing examiner's initial decision as shown in the tentative order of the Commission.

No objections having been filed, the proceeding came on for final consideration by the Commission upon the record herein for review and the Commission, having duly considered the matter and being now fully advised in the premises, 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, the same to be in lieu of the initial decision of the hearing examiner.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent General Shoe Corporation is a corporation organized and existing under and by virtue of the laws of the State of Tennessee with its office and principal place of business located at Nashville 3, Tennessee.

PAR. 2. Respondent is now, and for several years past has been, engaged in the manufacture, sale and distribution of shoes designated as "Storybook Shoes," "Acrobat Shoes" and "Acrobat Safety Shoes."

PAR. 3. The respondent causes and has caused said shoes, when sold, to be transported from its place of business in the State of Tennessee to purchasers thereof located in various other States of the United States and in the District of Columbia, and 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 certain statements and representations concerning the nature and usefulness of said shoes by means of labels on its shoes, advertisements inserted in newspapers and magazines of general circulation, and folders, pamphlets and circulars; also by radio continuities broadcast from radio stations. Among and typical of such statements and representations are the following:

With respect to Storybook Shoes:

. . . the foot is ALWAYS held in its natural, correct position . . .

. . . help insure the correct growth of their tender, little feet . . .

Safeguard NOW against foot ills later! . . .

Good care now means good feet later . . . give your child this expensive-type care! Shock Absorber Heel protects delicate nerve ends, Arch Lift Cushion keeps the foot aligned . . .

SHOCK ABSORBER HEEL . . . protects nerve terminals.

EACH CUSHION RESPONDS individually to foot action.

STORYBOOK CUSHION FOUNDATION prevents forward skid, holds foot accurately.

CHILDREN'S SUPER ACTIVE FEET . . . need the added protection of these soft, resilient pads . . . give developing arches just the amount of gentle support . . .

JOLTS can be dangerous to little feet. Shock Absorber Heel Cushion absorbs shock to delicate nerve-ends; Lift Cushion Arch keeps foot properly aligned.

. . . "Shock-Absorber" in Heel takes the jolts . . . cushions delicate nerve ends. "Lift Cushion" gives yielding support to the important arch structure.

Cushion Foundation adjusts individually to foot action . . . given better balance . . . sets foot accurately in shoe . . .

. . . You see, the two most sensitive parts of a child's foot . . . are located at the heel and in the arch. Storybook . . . SHOCK ABSORBER HEEL . . . protects the networks of nerves at the heel . . . each cushion responds individually to foot action. At the same time, the foot is held firmly in its natural position always, for Storybook Cushion Foundation shoes prevent a forward skid inside the shoe! . . . healthful shoes for boys and girls . . .

With respect to Acrobat Shoes:

They have the right combination for foot health

* * * Keep those young feet healthy and comfortable.

Acrobats * * * retard pronation or turning-in ankles.

Acrobat Shoes give growing feet the best possible foundation for future foot health * * *

Extended insoles eliminate ankle turn-in. Posture cut patterns insure ankle fit * * *

ACROBAT'S extended "cookie" insoles ELIMINATE ANKLE TURN-IN, keep young ankles straight and strong! Statistics show that 85% of our children have "turned-in" ankles * * *

Findings

50 F. T. C.

With respect to Acrobat Safety Shoes:

They start Baby walking RIGHT FROM THE START with this NEW 3-way safety design . . . ACROBAT SAFETY SHOES start good walking habits with those important first steps. They set the foot in a straight line, give extra ankle support; broad, squared heels for safer footing; . . . Reinforced BACK-STAY supports and guides ankles straight . . . FLEXIBLE SOLE permits free-action that builds muscles . . .

. . . help mothers with the important job of building strong, sound feet with Acrobats.

PAR. 5. Through the use of the statements and representations above set forth and others of similar import not specifically set out, respondent represented, directly and by implication:

That the wearing of its "Storybook Shoes" will hold the foot in its natural position, keep the foot properly aligned, hold the foot accurately in the shoe, insure correct growth of the foot, provide strong support for the arch of the foot, guard against foot ills and provide better balance; that the resilient pads at the heel and arch in children's shoes prevent forward skid, give arch support, cushion jolts and protect nerve terminals and the delicate nerve-ends in the heel.

That the wearing of its "Acrobat Shoes" gives growing feet the proper foundation and combination of features for foot health; will keep young feet healthy, eliminate pronation of ankles and keep young ankles straight and strong.

That the wearing of its "Acrobat Safety Shoes" will start children in good walking habits; will set the foot in a straight line, give extra ankle support and guide the ankle straight; that the flexible sole of said shoes permits the building of muscles and strong sound feet.

PAR. 6. The aforesaid statements and representations are false, misleading or deceptive. In truth and in fact, all of respondent's shoes are merely stock shoes made by quantity production methods and while they 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 or in aiding the natural development of the feet is insignificant.

The wearing of "Storybook Shoes" will not hold the foot in its natural position, keep the foot properly aligned, hold the foot accurately in the shoe, insure correct growth of the foot, provide any significant support for the arch of the foot, guard against foot ills nor provide better balance. The pads at the heel and arch of said shoes will not prevent forward skid. There are no particularly delicate or sensitive nerve-ends in the heel and any cushioning or protective effect provided by the pads in said shoes to the nerves that are located in the heel is insignificant.

There is nothing in the construction of respondent's "Acrobat Shoes" which is conducive to foot health in the case of children. The wearing of said shoes will not keep young feet healthy, will not eliminate pronation nor keep young ankles straight and strong.

The wearing of respondent's "Acrobat Safety Shoes" cannot be relied upon to start children in good walking habits, will not set the foot in a straight line, give extra ankle support nor guide the ankle straight. The use of said shoes will be of no value in the building of muscles or strong sound feet.

PAR. 7. Through the use of the word "health" as aforesaid in connection with 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 of the feet and correct all disorders of the feet which may be present.

PAR. 8. Such representation is misleading and, in its implications, untrue. All stock shoes, including respondent's, provide covering for all or part of the foot, and protect the feet from the elements and from external trauma. In addition, if the feet are normal and healthy, and the shoes properly fitted, and other factors affecting the health of the feet normal, such shoes, including respondent's, will tend to preserve that health. To represent, as respondent has, that its stock shoes, performing this ordinary function, are health shoes, misleads the potential purchaser into believing that such shoes will restore lost foot health, correct abnormalities, congenital or traumatic, and prevent and insure against the occurrence or reoccurrence of any of these things. This expansion of a commonplace role into a field of cure, prevention, and insurance against serious troubles, is deceptive particularly to the more than usually susceptible mind of a parent. Any variance from normal in the feet, any disturbance of full and easy function whatever its cause presents an individual diagnostic and treatment problem and no shoe will even aid, and indeed may prevent, restoration to normal unless specially adapted. The use of respondent's 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. Respondent's shoes cannot truthfully be designated as health shoes or as possessing health features.

PAR. 9. 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

Order

50 F. T. C.

induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's shoes.

CONCLUSION

The 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 General Shoe Corporation, a corporation, 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 "Storybook Shoes," "Acrobat Shoes" and "Acrobat Safety Shoes," or any other shoes of similar construction, irrespective of the designation applied thereto, do forthwith cease and desist from:

(1) Representing, directly or by implication that the wearing of respondent's "Storybook Shoes" will hold the foot in its natural position, keep the foot properly aligned, hold the foot accurately in the shoe, insure correct growth of the foot, provide strong support for the arch of the foot, guard against foot ills, or provide better balance.

(2) Representing, directly or by implication, that the resilient pads at the heel and arch in its children's shoes prevent forward skid, give arch support, cushion jolts, or protect nerve terminals of the nerve-ends in the heel.

(3) Representing, directly or by implication, that the wearing of respondent's "Acrobat Shoes" gives growing feet the proper foundation and combination of features for foot health; will keep young feet healthy, eliminate pronation of ankles or keep young ankles straight or strong.

(4) Representing, directly or by implication, that the wearing of respondent's "Acrobat Safety Shoes" will start children in good walking habits; will set the foot in a straight line, gives extra ankle support or guides the ankle straight, or will have any value in the building of muscles or strong sound feet.

(5) Using the word "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 manner that the wearing of respondent's shoes will prevent or cure diseases or abnormalities of the feet, keep the feet healthy, pre-

85

Order

vent the development of abnormalities, or correct any disorder of the feet.

It is further ordered, That the respondent 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 this order.

Commissioner Mason dissenting and stating that he is in accord with the ruling of the hearing examiner as approved by the United States Court of Appeals for the Seventh Circuit in Docket 4795—R. J. Reynolds Tobacco Company.

IN THE MATTER OF
THE d-CON COMPANY, INC., ET AL.

DECISION AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 5958. Complaint, Feb. 28, 1952—Decision, July 17, 1953

Where a corporation and its officers, engaged in the manufacture, sale and distribution under the name "d-Con" of three rodenticide preparations, including a concentrate for mixing with bait, and "d-Con Ready Mixed" and "d-Con's Mouse Prufe"; in advertisements in periodicals and radio continuities—

- (1) Represented that "d-Con" was non-poisonous and completely safe and might be used without danger to human beings and domestic and farm animals; when in fact, while said products were not violent poisons and repeated doses for a period of days in large amounts would be required to endanger animals or humans, nevertheless, handled carelessly or by those who did not realize their poisonous nature, they constituted a serious danger to certain animals and humans;
- (2) Represented that "d-Con" was "the ONLY rat and mouse killer in the world that contains . . . special ingredient that the UNITED STATES TESTING LABORATORIES has PROVED to be three times more effective"; when in fact, composed of Warfarin mixed in a bait of freshly ground corn, it was no more attractive to rats than other freshly ground corn and not significantly more attractive than certain other rodenticides;
- (3) Represented that there were "NO TELL-TALE AFTER ODORS with d-CON"; facts being that it would not eliminate all after-odors caused by putrefaction of the carcasses of dead rats;
- (4) Represented that "d-Con's Mouse-Prufe" was the "only mouse eliminator that contained Warfarin"; when in fact there were other Warfarin-containing products designed for mouse control on the market when such statement was made on radio commercials; and
- (5) Represented that "d-Con" was "the new scientific discovery reported in READER'S DIGEST": when in fact the Reader's Digest article contained no reference to d-Con itself but was about Warfarin, principal ingredient in competing products as well as in d-Con;

Held: That such acts and practices were all to the prejudice and injury of the public and competitors, and constituted unfair and deceptive acts and practices in commerce and unfair methods of competition therein.

Before *Mr. Webster Ballinger*, hearing examiner.

Mr. Edward F. Downs for the Commission.

Mr. Horace A. Young, of Chicago, Ill., for United Enterprises, Inc.

Frank E. & Arthur Gettleman, of Chicago, Ill., for all other respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 28, 1952, issued and sub-