

IN THE MATTER OF

DR. POSNER SHOE CO., INC., FORMERLY KNOWN AS DR.
A. POSNER SHOES, INC.DECISION IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 6003. Complaint, June 19, 1952—Decision, June 15, 1954

Where a corporation engaged in the manufacture and interstate sale and distribution to dealers and the public generally, of its "Dr. Posner's Muscle Builder Shoe", "Dr. Posner's Scientific Shoe", and "Dr. Posner's Ritestart Shoe"; through statements on labels on its shoe boxes and in advertisements in magazines and in folders and circulars—

- (a) Represented falsely that its said "Scientific Shoes" would give correct body balance, perfect posture, better foot and bodily health, and correct walking position and assure the growth of straight feet;
- (b) Represented falsely that its "Muscle Builder Shoes" would prevent pronation, help build muscles, and keep feet healthy;
- (c) Represented falsely that its "Ritestart Shoes" would help give proper posture and correct body balance and assure foot health for children;
- (d) Represented falsely that its said shoes were "health shoes" and as such would prevent and cure abnormalities and disorders of the feet; and
- (e) Represented falsely that use thereof would have a beneficial effect on the condition known as "weak foot", i. e., as used by it in its advertising and literature:

Held, That such representations were false, deceptive, and misleading, and constituted unfair and deceptive acts and practices in commerce.

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

Mr. Ames W. Williams, for the Commission.

Mr. Maurice Knapp, of New York City, for respondent.

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 15, 1954, 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

This proceeding is before the undersigned Hearing Examiner for final consideration on the complaint, answer thereto and a stipulation as to the facts, in lieu of testimony, which was entered upon the record herein, whereby it was stipulated that the Hearing Examiner may

proceed upon the basis of such stipulation of facts to make his initial decision upon such facts without the filing of proposed findings and conclusions or the presentation of oral arguments by counsel.

FINDINGS AS TO THE FACTS

1. Respondent, Dr. Posner Shoe Co., Inc., formerly known as Dr. A. Posner Shoes, Inc., is a corporation organized under the laws of the State of New York with its principal place of business located at 101 West 31st Street, New York, New York.

2. For several years last past, the respondent has been engaged in the manufacture and in the sale and distribution in interstate commerce of shoes designated as "Dr. Posner's Muscle Builder Shoe", "Dr. Posner's Scientific Shoe" and "Dr. Posner's Ritestart Shoe." Respondent sells said shoes to dealers and the public generally and its volume of business in the sale of said shoes in such commerce is and has been substantial. In addition, respondent also manufactures certain other shoes known as "Dr. Posner's Anti-pigeontoe Shoe", "Dr. Posner's Prewalker Clubfoot Shoe" and "Dr. Posner's Muscle Builder No. 2 Anti-Pronation Shoe" which it claims to distribute upon prescription by physicians and orthopedic specialists. These latter shoes were not included in the complaint and are not a part of this proceeding.

3. 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 to the public generally concerning the nature and usefulness of said shoes by means of labels on its shoe boxes, advertisements inserted in magazines of general circulation, and in folders and in circulars. By means of these statements and representations, the respondent has represented, directly and by implication—

(a) That respondent's shoes known as Dr. Posner's Scientific Shoes will give correct body balance, perfect posture, better foot and bodily health, and correct walking position and assure the growth of straight feet.

(b) That respondent's shoes known as Dr. Posner's Muscle Builder Shoes will prevent pronation, build muscles and keep feet healthy.

(c) That respondent's shoes known as Dr. Posner's Ritestart Shoes will help give proper posture and correct body balance and assure foot health for children.

(d) That respondent's said shoes are health shoes and as such will prevent and cure abnormalities and disorders of the feet.

(e) That the use of respondent's said shoes will have a beneficial effect on the condition known as "weak foot" which term has been

Conclusion

50 F. T. C.

used by the respondent in its advertising and literature as being synonymous with pronation.

4. Respondent's Dr. Posner's Muscle Builder Shoe contains a built-in wedging on the inner border of the heel and Dr. Posner's Scientific Shoes are constructed in such a manner as to effect a wedge by the insertion of a cork filling on the inner border of the shoe. These devices, incorporated in said shoes, if prescribed by physicians and orthopedic specialists are recognized as capable of performing the same function as wedges inserted at the direction of physicians and orthopedic specialists. Consequently, said shoes contain features which may tend to aid in preventing the persistence of pronation or in alleviating the symptoms of mild pronation.

5. Most children's feet in the early stages of life are in the position of pronation, and such condition may or may not be accompanied by systemic disease and may or may not be symptomatic. In the absence of congenital abnormality, some disease or other interference, the pronation usually disappears as the child develops. One of the recognized medical procedures intended to prevent the persistence of mild pronation exhibited in early childhood is the use of the wedge in the inner border of the child's shoe; the thickness of the wedge varying with the individual requirements of the child, but usually about $\frac{1}{8}$ th of an inch thick in the beginning. Such a wedge is intended to temporarily tilt the heel bone or os calcis and improve its relationship to the forefoot in cases of mild pronation and when such a measure is individually indicated may have value in the proper development of a child's feet. While said wedge tends to prevent the persistence of pronation in children's feet, it cannot be held as a medical fact and with certainty that wedging will accomplish such a result.

6. Respondent's shoe, designated Dr. Posner's Muscle Builder Shoe, does not build muscle. The use of respondent's aforesaid shoes, including Dr. Posner's Ritestart Shoe, or any features contained therein, will not in and of themselves result in correct body balance, perfect posture, better foot or bodily health, correct walking position or assure the growth of strong and straight feet. Respondent's said shoes are not health shoes and will not prevent or cure diseases, abnormalities, deformities or disorders of the feet.

CONCLUSION

Within the limitations of the stipulation and the findings herein, respondent's representations hereinbefore described are false, deceptive, and misleading and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

1006

Order

ORDER

It is ordered, That respondent, Dr. Posner Shoe Co., Inc., formerly known as Dr. A. Posner 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 and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's shoes, designated "Dr. Posner's Muscle Builder Shoe," "Dr. Posner's Scientific Shoe," and "Dr. Posner's Ritestart Shoe," or any other shoe of similar construction or performing similar functions irrespective of the designation applied thereto, do forthwith cease and desist from representing directly or by implication:

1. That the said shoes are "health" shoes or will keep the feet healthy;

2. That the said shoes will prevent or cure diseases, abnormalities, deformities, or disorders of the feet;

3. That the use of said shoes in the case of children will result in correct body balance or perfect posture, or better foot or bodily health, or feet that grow strong and straight, or representing in any manner that any special features or construction contained in respondent's shoes will improve body balance, posture, or bodily health, or assure proper growth or development of the feet;

4. That the built-in wedges contained in said shoes will of themselves and without further measures prescribed by physicians or orthopedic specialists place the heel bone in proper position;

5. That the use of said shoes causes the toes to point straight ahead or results in the correct walking position;

6. That the use of said shoes has any value in the proper development of the muscles of children's feet;

7. That through the use of the words "muscle builder" as part of the brand name "Dr. Posner's Muscle Builder Shoe," or any other name, said shoes are muscle builder shoes or build muscle; and

8. That the use of said shoes will prevent or correct pronation or weak foot:

Provided, however, That nothing herein contained shall prevent respondent from representing that said shoes embody antipronation devices or factors which are often approved by physicians as beneficial in preventing the persistence of pronation and alleviating the symptoms of mild pronation in children when such measures are found to be individually indicated.

Order

50 F.T.C.

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 15, 1954].

Order

IN THE MATTER OF

VCA LABORATORIES, ET AL.

Docket 6071. Complaint, Dec. 12, 1952. Order, June 16, 1954

Charge: Advertising falsely as to ailments and symptoms, results of product, free goods, etc. in sale of "Rybutol" food and drug preparation.

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

Mr. Jesse D. Kash for the Commission.

Mr. Richard A. Mahar, of Washington, D. C., and *Rogers, Hoge & Hills*, of New York City, for respondents.

ORDER CLOSING CASE WITHOUT PREJUDICE

This matter has been certified to the Commission by the hearing examiner for consideration of a proposed stipulation and agreement to cease and desist of respondent VCA Laboratories offered in settlement of this proceeding.

Counsel supporting the complaint does not oppose this proposal stating that he believes the acceptance of the proposed stipulation would constitute an adequate settlement of the matter and that such a settlement would result in a great saving of time and expense.

The Commission having considered the proposed settlement and being of the opinion that its acceptance would result in the elimination of the complained of practices, and that, therefore, further proceedings herein are unnecessary:

It is ordered, That the proposed stipulation and agreement to cease and desist submitted by respondent VCA Laboratories be, and it hereby is, accepted.

It is further ordered, That the case growing out of the complaint herein, be, and it hereby is, closed, without prejudice, however, to the right of the Commission to reopen the same or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.