

IN THE MATTER OF
SAM SMITH SHOE CORPORATION TRADING AS THE
YANKEE SHOEMAKERS

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6206. Complaint, May 17, 1954—Decision, Jan. 18, 1955

Consent order requiring a dealer in Newmarket, N. H., to cease representing on labels and in advertising that his "Little Yankee Shoes", etc., for children were designed and constructed to prevent foot troubles and had orthopedic qualities generally.

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

Mr. Michael J. Vitale for the Commission.

Lourie & Cutler, of Boston, Mass., 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 Sam Smith Shoe Corporation, a corporation, hereinafter referred to as respondent, has violated the provisions of 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. The respondent, Sam Smith Shoe Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New Hampshire. Its office and principal place of business is located in Newmarket, New Hampshire. It trades and does business under the name of The Yankee Shoemakers.

PAR. 2. The respondent is now, and has been for several years last past, engaged in the sale and distribution of children's shoes designated by it as "Little Yankee Shoes," "Little Yankee Normal-Izers" and "Little Yankee Toddler" shoes.

PAR. 3. Respondent causes, and has caused, said shoes, when sold, to be transported from its place of business in the State of New Hampshire to purchasers thereof located in various other States of the United States, 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. 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 for the purpose of inducing the purchase of its said shoes, the respondent has made various statements and representations concerning the nature and usefulness of said shoes by means of labels on its shoe boxes, advertisements inserted in newspapers and magazines of general circulation, and by means of folders, circulars, and radio continuities. Among and typical of such statements and representations are the following:

(1) Advertisements with respect to "Little Yankee Shoes":

* * * Give your child a good start on the road to foot health with "Little Yankees" * * *. Designed to keep little feet normal * * *.

* * * Time to safeguard your youngster's foot health. Bring them in to be fitted with Little Yankee Shoes * * *.

Correctly designed and constructed shoes help prevent foot troubles which undermine health.

* * * Weak ankles and arches are troublesome not only in themselves, but tend to produce poor posture * * *.

* * * Little Yankee Shoes follow the normal shape of the growing foot, and give proper support and balance.

Make sure that your youngster grows up sound and strong—in sturdy smart-looking, HEALTH-PROTECTING Little Yankees.

* * * Assure foot health for your youngster * * *.

* * * Plenty of support for correct balance * * *.

* * * Designed to promote good posture * * *.

* * * Help keep little dancing feet straight and strong * * *.

* * * Has every foot health feature needed to insure straight, sturdy growth * * *.

Promote good posture and protect growing feet * * *.

(2) Advertisements with respect to "Little Yankee Normal-Izers" shoes:

* * * corrective shoes—Little Yankee Normal-Izers * * * restores proper position of heel bones—promotes normal balance * * * promotes normal foot health and posture * * * for normal correction of intumed ankles, flat feet, weak arches and poor posture * * *.

* * * No Doctor can prescribe better corrective shoes than Little Yankee Normal-Izers * * * Gentle orthopedic correction for children's feet * * *.

(3) Advertisements with respect to "Little Yankee Toddler Shoes":

* * * Little Yankee Toddler scientifically designed to promote normal foot growth * * *.

* * * that one out of every three infants develop weak feet during the first year of walking. You have given your baby a healthy start in the Little Yankee "Toddler".

This expertly crafted shoe is built to give needed support and balance to Baby's every step during the important formative period.

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PAR. 5. Through the use of the statements and claims hereinabove set forth, and others similar thereto not specifically set out herein, respondent has represented, directly or by implication, with respect to its shoes:

(1) That the "Little Yankee Shoes" will keep and help to keep the feet strong, healthy and normal, will assure foot health, will guard or safeguard foot health, will protect, promote and save foot health, contain health features and are affirmatively conducive to the health of the feet; that said shoes will prevent and help prevent foot troubles, will prevent weak arches and weak ankles, will insure or promote straight and sturdy growth of the feet, will keep the feet straight and strong, will give proper posture control and promote and effect good posture and provide correct balance.

(2) That the "Little Yankee Normal-Izers" are a corrective shoe and provide orthopedic correction; will restore proper position of heel bones; will improve posture and promote normal posture; will correct and prevent inturned ankles, flat feet, weak arches, poor posture, and defects, deformities and abnormalities of the feet.

(3) That use of the "Little Yankee Toddlers" shoe will prevent development of weak feet and promote normal foot growth.

PAR. 6. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

(1) Respondent's "Little Yankee Shoes" will not keep or help keep the feet strong, healthy or normal; will not assure foot health; will not guard or safeguard foot health; will not protect, promote or save foot health; do not contain health features and are not affirmatively conducive to the health of feet. Said shoes will not prevent or help prevent foot troubles; will not prevent weak arches or ankles; will not insure or promote straight or sturdy growth of the feet; will not keep the feet straight or strong; will not give proper posture control or promote or effect good posture and will not provide correct balance.

(2) Respondent's "Little Yankee Normal-Izers" are not a corrective shoe and will not provide orthopedic correction; will not improve posture or promote normal posture; will not correct or prevent flat feet, weak arches, poor posture or defects, deformities or abnormalities of the feet. Although said shoes embody devices or factors which are often approved by physicians as beneficial in preventing the persistence of displaced heel bones and inturned ankles and alleviating the symptoms of these conditions when such measures are found to be individually indicated, said shoes cannot be relied upon to restore proper position of the heel bones or to correct or prevent inturned ankles.

(3) Respondent's "Little Yankee Toddlers" shoe will not prevent the development of weak feet or promote normal foot growth.

PAR. 7. Through the use of the word "Normal-Izers," in the brand name "Little Yankee Normal-Izers," respondent has represented and now represents that said shoes will keep feet normal and correct or prevent abnormalities of the feet.

PAR. 8. The said representations are false, misleading and deceptive. In truth and in fact, the use of respondent's shoes, designated as "Little Yankee Normal-Izers," will not keep feet normal or correct or prevent abnormalities of the feet.

PAR. 9. In the course and conduct of its business and for the purpose of inducing the purchase of said shoes, the respondent furnishes to its dealers advertising matter containing various statements and representations concerning methods of selling said shoes. Among and typical of such statements and representations contained in said advertising matter are the following:

We study the way your child walks without shoes, watching weight placement, gait and posture.

* * * Our check-up precautions are also designed to keep little feet normal.

* * * selling children's shoes must go beyond supplying the correct size * * * with platform fitting each child's needs become a distinct study. The first steps are foot analysis, thereafter come size tests. Such a combination is health promoting. Posture fitting dramatizes your care of children's feet and labels you "expert" to the parents of your community * * * special regard for arch condition and posture defects * * * gait is analyzed and walking defects, if any, are detected. The conclusions of the first two studies indicate the kind of shoe or correction needed * * * some retailers add a generous mixture of showmanship to their methods * * * women are impressed * * * and like to be waited on by obvious experts * * *.

PAR. 10. Through the use of the advertising material set forth in Paragraph Nine, respondent represented, directly or by implication, that the fitters employed by dealers selling respondents said shoes and the dealers themselves are qualified as experts to diagnose foot conditions and to prescribe corrective and preventive measures for defects of weight placement, gait and posture and corrective and preventive measures for defects, deformities and abnormalities of the feet.

PAR. 11. The said statements and representations are false, misleading and deceptive. In truth and in fact, most fitters of said shoes employed by dealers and most dealers themselves are not qualified as experts to diagnose foot conditions or to prescribe corrective or preventive measures for defects of weight placement, gait or posture or corrective or preventive measures for defects, deformities or abnormalities of the feet.

By furnishing said advertising matter to its dealers respondent placed in the hands of said dealers a means and instrumentality by and through which said dealers may mislead and deceive the public as to the qualifications of themselves and of the fitters employed by them and the results which may be expected in purchasing and using respondent's shoes.

PAR. 12. In the course and conduct of its business respondent is in substantial competition in commerce with other corporations and with firms and individuals also engaged in the sale of children's shoes.

PAR. 13. The use by respondent of the foregoing false, deceptive and misleading statements and representations with respect to its shoes has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's shoes, and has placed in the hands of dealers in such shoes a means and instrumentality whereby they may deceive and mislead the purchasing public in the respect stated herein. As a consequence substantial trade in commerce has been unfairly diverted to respondent from its competitors and substantial injury has thereby been done to competition in commerce.

PAR. 14. The aforesaid advertisements and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDERS AND DECISION OF THE COMMISSION

Order modifying initial decision, adopting initial decision as modified, as Commission's decision and directing that report of compliance be filed, Docket 6206, January 18, 1955, follows:

This matter having come on to be heard by the Commission upon the initial decision of the hearing examiner herein, and request of counsel supporting the complaint that the initial decision be changed to conform to a stipulation between respondent and counsel supporting the complaint, executed subsequent to the filing of said initial decision, by substituting the word "of" for the word "or" immediately following the word "defects" in Paragraph 5 of the order in said initial decision; and

The Commission having duly considered the initial decision, request of counsel supporting the complaint, and the record herein, and

being of the opinion that the initial decision should be modified by making the change requested, and that with such modification said initial decision is adequate and appropriate to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner herein be, and it hereby is, modified by substituting the word "of" for the word "or" immediately following the word "defects" in Paragraph 5 of the order in said initial decision.

It is further ordered, That the attached initial decision of the hearing examiner, as herein modified, shall, on the 18th day of January 1955, become the decision of the Commission.

It is further 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.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 17, 1954, issued and subsequently served its complaint upon the respondents, Sam Smith Shoe Corporation, a corporation, trading also as The Yankee Shoemakers, with its office and principal place of business located in Newmarket, New Hampshire. Respondent is engaged in the sale and distribution of children's shoes designated as "Little Yankee Shoes," "Little Yankee Normal-Izers" and "Little Yankee Toddlers."

On June 30, 1954, there was filed with the Federal Trade Commission a stipulation between the parties providing for entry of a consent order, which stipulation appears of record in these formal proceedings. By the terms thereof both parties agree that the complaint and said stipulation shall constitute the entire record herein; that respondent admits all of the jurisdictional allegations set forth in the complaint; that both parties waive the making of findings of fact or conclusions of law by the hearing examiner or by the Commission; that respondent waives the right to file exceptions or to demand oral argument before the Commission, as well also all further and other procedure before the hearing examiner or the Commission to which, but for the execution of said stipulation, the respondent might be entitled under the Federal Trade Commission Act or the rules of practice of the Commission. Said stipulation further provides that said complaint may be used in construing the terms of the order herein, which latter may be altered, modified or set aside in the manner provided by statute for other orders by the Commission.

Order

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On the basis of the foregoing, the undersigned hearing examiner concludes that this proceeding is in the public interest and, in conformity with the action therein contemplated and agreed, makes the following order:

ORDER

It is ordered, That the respondent, Sam Smith Shoe Corporation, a corporation, and its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondent's shoes now designated "Little Yankee Shoes," "Little Yankee Normal-Izers" and "Little Yankee Toddlers," or of any other shoe of similar construction or performing similar functions irrespective of the designation applied thereto, do forthwith cease and desist from:

(1) Representing directly or by implication that "Little Yankee Shoes":

(a) Will keep or help keep the feet strong, healthy or normal; assure foot health; guard or safeguard foot health; promote or save foot health; contain health features or are affirmatively conducive to the health of the feet;

(b) Will prevent or help prevent foot troubles, weak ankles or arches; insure or promote straight or sturdy growth of the feet; keep the feet straight or strong; give proper posture control or promote or effect good posture or provide correct balance.

(2) Representing directly or by implication that the "Little Yankee Normal-Izers" shoe is a corrective shoe or provides orthopedic correction, improves posture or promotes normal posture; corrects or prevents flat feet, weak arches, poor posture, defects, deformities or abnormalities of the feet; that said shoes can be relied upon to restore proper position of the heel bones or to correct or prevent inturned ankles, provided, however, that nothing herein contained shall prevent respondent from representing that said shoes embody devices or factors which are often approved by physicians as beneficial in preventing the persistence of displaced heel bones and inturned ankles and alleviating the symptoms of these conditions when such measures are found to be individually indicated;

(3) Representing directly or by implication that the "Little Yankee Toddlers" shoe prevents the development of weak feet or promotes normal foot growth;

(4) Using the word "Normal-Izers," or any other word or words of similar import or meaning alone or in combination with any other word or words, to describe, designate, or refer to its shoes;

(5) Representing directly or by implication that fitters employed by dealers selling respondent's shoes or the dealers themselves are qualified as experts to diagnose foot conditions or to prescribe corrective or preventive measures for defects of weight placement, gait or posture or corrective or preventive measures for defects, deformities or abnormalities of the feet.

IN THE MATTER OF

BROADMORE FASHIONS, INC., DAN-DEL COAT CORP.,
AND BERNARD DROBES AND HARRY BRODYORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT AND OF THE WOOL PRODUCTS LABELING ACT*Docket 6231. Complaint, Aug. 19, 1954—Decision, Jan. 18, 1955*

Order requiring two sellers in New York City to cease violating the Wool Products Labeling Act by labeling certain ladies' coats as "100% Cashmere" when they were composed entirely of sheep's wool, by failing to label wool products as required, and by failing to set forth separately on tags the fiber content of interlinings.

Mr. George Steinmetz for the Commission.

Mr. Charles M. Kagan, of New York City, for respondents.

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 January 18, 1955, the initial decision in the instant matter of hearing examiner Loren H. Laughlin, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (hereinafter referred to as the Commission) on August 31, 1954, issued its complaint herein under the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, against the above-named corporate respondents and against the respondents Bernard Drobos and Harry Brody, both individually and as officers of both of said corporations, charging them and each of them in several particulars with having violated the provisions of said Acts and of the Rules and Regulations of the Commission promulgated under said Wool Products Labeling Act. Said complaint was duly served upon each of said respondents. On September 20, 1954, all respondents filed their answer, and on October 4, 1954, pursuant to an order of the hearing examiner so authorizing, they filed their amended answer. The amended answer in substance admits all allegations of the complaint except that respondent Harry Brody denies being an officer of Dan-Del Coat Corp., and all respondents state they are without any knowledge as to whether the ladies' coats referred