

IN THE MATTER OF
SPIRT & COMPANY, INC., ET AL.

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

Docket 5926. Complaint, Oct. 8, 1951—Decision, Jan. 20, 1955

Order requiring a corporation in Waterbury, Conn., to cease advertising that its preparation "Lipan", the active ingredients of which were hog pancreas and vitamins B₁ and D, was a cure for psoriasis and would prevent its recurrence.

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

Mr. John J. McNally for the Commission.

Weisman & Weisman, of Waterbury, Conn., and *Mr. Lewis E. Caplan*, of New Haven, Conn., for respondents.

ORDERS AND DECISION OF THE COMMISSION

Order denying appeal of counsel supporting the complaint from initial decision and decision of the Commission and order to file report of compliance, Docket 5926, January 20, 1955, follows:

This matter came on to be heard by the Commission upon the appeal filed by counsel supporting the complaint from the initial decision of the hearing examiner and upon the briefs in support of and in opposition to said appeal, oral argument not having been requested.

The Commission having considered the appeal and the record herein and having determined that the grounds for appeal are without merit and having additionally determined that the initial decision of the hearing examiner is appropriate in all respects to dispose of this proceeding;

It is ordered, That the appeal of counsel supporting the complaint from the initial decision of the hearing examiner be, and it hereby is, denied.

It is further ordered, That the initial decision of the hearing examiner did, on the 20th day of January 1955, become the decision of the Commission.

It is further ordered, That the respondents, Spirt & Company, Inc., a corporation, and Louis L. Spirt, S. Burton Spirt and Thelma F. Spirt, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and

form in which they have complied with the order to cease and desist contained in the initial decision.

Commissioner Mead dissenting.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 8, 1951, issued and subsequently served its complaint in this proceeding upon the respondents Spirt & Company, Inc., a corporation, and Louis L. Spirt, S. Burton Spirt, and Thelma F. Spirt, individually and as officers of said corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondents' answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said 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, the proceeding regularly came on for final consideration by said hearing examiner on the complaint, answer, testimony and other evidence, and proposed findings as to the facts and conclusions of law presented by counsel, 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, conclusions drawn therefrom, and order.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Spirt & Company, Inc., is a corporation organized and existing by virtue of the laws of the State of Connecticut with its office and principal place of business located in Waterbury, Connecticut.

Respondents Louis L. Spirt, S. Burton Spirt and Thelma F. Spirt are president, treasurer and secretary, respectively, of corporate respondent. Said individuals as officers of corporate respondent formulate, direct and control its policies, acts and practices.

PAR. 2. The respondents are now, and have been for more than one year last past, engaged in the sale of a preparation containing drugs as "drug" is defined in the Federal Trade Commission Act. Said preparation is sold in both tablet and capsule form.

The designation used by respondents for their said preparation and the formula and directions for use thereof are as follows:

Designation: Lipan.

Formula: The active ingredients in each tablet or capsule are:

7½ grains of desiccated and defatted hog pancreas of triple U. S. P. strength.

500 International Units of Vitamin B₁

500 International Units of Vitamin D.

Directions:

Dosage: Two to three capsules before each meal or as recommended by the physician. Chemical research has shown that because of the special nature of the LIPAN treatment, results should be expected only after LIPAN has been taken for several weeks. Careful investigation by well known physicians has demonstrated that Psoriasis—so difficult to correct—may be effectively alleviated when LIPAN is taken consistently.

Alcohol contra-indicated: During treatment, it is essential that alcoholic beverages or alcohol in any form be avoided. (Keep bottle tightly capped.)

PAR. 3. Respondents cause said preparation, when sold, to be transported from their place of business in the State of Connecticut to purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said preparation in commerce between and among the various States of the United States and in the District of Columbia. Their volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their business, respondents have disseminated and have caused the dissemination of advertisements concerning Lipan 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 and are likely to induce, directly or indirectly, the purchase of said product in commerce.

Among the statements and representations contained in said advertisements are the following:

(a) For the past several years a number of Physicians have reported amazing success in treating Psoriasis with LIPAN—a new medical wonder taken *internally*. LIPAN (registered U. S. Patent Office) is a combination of glandular substances that treat certain internal disorders which many medical men now agree to be the cause of Psoriasis. Clinical results show LIPAN successful in over 90% of the cases treated. Even stubborn lesions are alleviated to a degree almost beyond belief. *Absolutely harmless.*

(b) Psoriasis, as you know, is an unpredictable affliction and no one can foretell exactly how quickly response will be observed in any given case. Patient dosage with LIPAN has been found to be effectively gratifying to those who exhibit a persistent attitude. Whether your own case responds quickly to LIPAN, or whether it proves to be one of the medium or obstinate cases, we are confident that a persistent attitude and patient dosage with LIPAN will be found effective.

(c) Do not expect miracles from LIPAN but give it a thorough trial. Psoriasis does not develop overnight and it will not disappear overnight. Although this new internal medication has demonstrated remarkable ability to clear up the skin and to keep it free from lesions year after year, results are not obtained immediately. Remember, when you take LIPAN you are attacking what is now believed to be the cause of the disease, not merely treating the symptoms. Patience is necessary. Naturally, different sufferers from Psoriasis respond differently. As a general rule, it takes at least five weeks before the lesions and crusty scales begin to disappear. For obstinate cases a longer time may be needed.

Subparagraph (a) above is the text of an advertisement appearing in "Screenland" and "Personal Romances" magazines during the first half of the year 1951; subparagraph (b) is from a form letter used by respondents to acknowledge receipt of a reorder of Lipan and was sent by mail separately or enclosed in the reorder shipment; and subparagraph (c) is from the last paragraph of an advertising circular distributed by respondents to persons who asked for information regarding Lipan.

PAR. 5. Through the use of the foregoing statements and representations and others of similar import, not specifically set out herein, respondents have represented and now represent that Lipan, taken as directed, is effective for the alleviation of the lesions and scales which are the visible symptoms or manifestations of psoriasis. There is no direct representation that Lipan is an "effective treatment" for psoriasis as alleged in the complaint. However, there are statements in respondents' advertising matter which, considered in the light of the emphasis added by the format and type selection of the advertisements, would lead to the conclusion upon the part of a substantial part of the purchasing public that Lipan is a cure for psoriasis and will prevent its recurrence.

PAR. 6. The said advertisements are misleading in material respects and are false advertisements as that term is defined in the Federal Trade Commission Act, as more specifically hereinafter set forth.

The record is clear that the etiology of psoriasis is undetermined and that there is no known cure; hence, any representation, direct or implied, that respondents' product is a cure for psoriasis and will prevent its recurrence is false and misleading.

Whether or not Lipan is effective, or an "effective treatment," as used in the complaint, for psoriasis depends upon definition. Some of the medical testimony was to the effect that for a product to be an effective treatment for a disease it must be a cure for that disease, but the preponderance of the evidence is that, although as to some diseases such connotation is acceptable, yet as to ailments for which there is no known cure, the term is used by the medical profession and under-

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stood quite generally as referring to an agent or treatment that brings about an amelioration of symptoms, which, in the case of psoriasis, would be a clearance of all or a substantial portion of the lesions or patches for a reasonable length of time. Cure would connote the complete removal or involution of all the skin lesions without recurrence. The preponderance of the reliable, probative and substantial evidence in this proceeding does not support the conclusion that Lipan is not, in many instances, an effective treatment for psoriasis.

In support of the allegations of the complaint three eminent dermatologists were presented none of whom had used respondents' product although all of them had used, separately or in combination, vitamin B₁, vitamin D and a pancreatic substance which none of them could identify as being from the same source or of the same strength as that contained in Lipan. Two of these experts, father and son, defined effective treatment as synonymous with cure, and stated that Lipan is not an effective treatment for psoriasis. Their testimony must be evaluated in terms of their definition. The other expert stated that an effective treatment should result in removal of all the lesions of the disease for a considerable period of time and, based on his clinical observations and his use of the ingredients indicated above, he would not think that Lipan would be an effective treatment.

In opposition to the allegations of the complaint, respondent Louis L. Spirt testified that he was born in 1907, that he had suffered from psoriasis since infancy, that following the use of desiccated, defatted hog pancreas for an eight month period in 1939, the psoriatic lesions which had previously covered approximately seventy-five percent of the surface of his body disappeared. For a period of about six months he then discontinued the use of this substance and the lesions returned. He then resumed the hog pancreas treatment and the lesions again cleared completely. He continued the use of hog pancreas until 1946 or 1947 when he started using Lipan. Since then he has been taking "a maintenance dose" of two capsules of Lipan daily and his skin has been free of lesions.

This testimony was supported by Spirt's personal physician, a specialist in internal medicine, who testified also that he has used and uses Lipan in his private practice and has found it an effective treatment for psoriasis; defining effective treatment as one in which from 50% to 75%, or more, of the psoriatic lesions are cleared. During a test period of from 12 to 18 months, he administered Lipan to some forty psoriatic patients and observed that beneficial results were obtained in from 60% to 65% of the cases. His belief that Lipan is an

effective treatment for psoriasis is based on his experience with his private patients and these tests.

Two dermatologists, who were equally as qualified as those presented in support of the complaint who had used Lipan in private practice and in specific tests, testified that Lipan is an effective treatment for psoriasis; one conducted his tests in Philadelphia, the other in Boston. There was no collaboration between the two. One found complete clearance of lesions or improvement in 58% of the patients tested, the other in 63%. This they believed to be ascribable to Lipan and to be significant, even though in some cases external treatments were also used.

These tests were not conducted under close controls in a technically approved scientific manner nor were all the supporting detail data produced, yet the character of the men making the tests and the further fact that each has used and is using the product in private practice lends weight to their testimony.

This case does not rest upon the determination of the scientific accuracy of the tests or upon the reported results of such tests. As against expert testimony based upon experience, general knowledge and the separate use of some or even all of the ingredients of respondents' product, expert testimony which is based upon equally valid general knowledge supported by experience gained from use of respondents' product in medical practice and in specific tests has the greater weight. But even were the evidence equally balanced the conclusion would have to be that the allegations of the complaint as to the effectiveness of Lipan are not sustained.

PAR. 7. The use by respondents of the advertisements and representations hereinabove found to be false and misleading had and has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that the statements and representations contained therein are true, and to induce the purchase of substantial quantities of respondents' preparation by reason of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of respondents, herein found to be false and misleading, 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 respondents Spirt & Company, Inc., a corporation, and its officers, Louis L. Spirt, S. Burton Spirt and Thelma F. Spirt, individually and as officers of said corporation, their 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 the preparation Lipan or any preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same or any other name, do forthwith cease and desist from, directly or indirectly,

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

(a) that said preparation constitutes a cure for psoriasis, or will prevent its recurrence;

(b) that said preparation has value in the treatment of psoriasis except as it may afford relief of the external symptoms and manifestations of psoriasis.

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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

DISSENTING OPINION OF COMMISSIONER MEAD

The Commission has denied in its entirety the appeal of counsel supporting the complaint from the initial decision of the hearing examiner and, being of the opinion that the appeal should have been in part granted, I am noting my dissent from that action. I am convinced that certain findings of fact appearing in the initial decision are not in accord with the greater weight of the scientific evidence received in this proceeding, and I deem the order to cease and desist which is contained in the initial decision to be inappropriate to the extent that its proscriptions have been restricted by those erroneous findings of fact.

Respondents are engaged in the advertising and sale in commerce of the product Lipan, which is offered for use by persons afflicted with psoriasis. The complaint under which this proceeding was instituted

alleges that the respondents have represented in advertisements that their preparation constitutes an effective treatment or cure for that disorder and will prevent its recurrence, and that the advertisements to such effect are false advertisements within the meaning of the Federal Trade Commission Act. The initial decision rejected the views expressed by certain of the scientific witnesses called by the respondents to the effect that Lipan, when used as directed, will be effective in preventing the recurrence of psoriasis and, in that connection, found that the advertising statements in reference to product efficacy against recurrence have been false and misleading. The hearing officer properly concluded also that the preparation is not a cure for psoriasis as represented in the advertising for Lipan.

On the question of its efficacy as a treatment, three physicians, who were called by the respondents, in effect testified that their use of Lipan, in the course of clinical studies conducted by them and otherwise in their practice, warranted conclusions that the preparation is an effective treatment for psoriasis and that it affords complete or partial clearance of lesions in many cases. On the other hand, the physicians called by counsel supporting the complaint, who testified in the course of the case-in-chief, variously expressed views that Lipan is not an effective treatment for psoriasis or has no beneficial effect upon it. Among other things, the initial decision holds that, as against the expert testimony of the witnesses appearing in support of the complaint which is based on their experience and general knowledge and separate use of some or all of the ingredients contained in the respondents' preparation, the testimony of the witnesses presented by the respondents must be regarded to have the greater weight. The reasons as assigned in that decision is that the views of the latter appear based on equally valid general knowledge and supported additionally by experience gained from use of the product Lipan, both in their practice and in specific tests. The initial decision, accordingly, has held that the preponderance of the reliable and probative evidence does not support conclusions that Lipan will not in many cases constitute an effective treatment for psoriasis, and it is these evaluations as to the weight of the evidence which I regard to be erroneous.

Psoriasis, the record shows, is characterized by dense silvery scales on the body's surfaces and the lesions appearing on the skin vary in size and pattern. An interesting characteristic of this chronic disease, for which there is no known cure, is that it is subject to spontaneous cycles of remission and exacerbation varying in duration and intensity. Responsiveness to treatment from person to person and

from attack to attack on the same patient is highly variable and changes in diet, climate or other factors sometimes are accompanied by changes in the condition of the lesions.

Each Lipan tablet contains $7\frac{1}{2}$ grains of desiccated and defatted hog pancreas, triple U. S. P. strength, 500 International Units of Vitamin B-1 and 500 International Units of Vitamin D. This pancreatic substance, referred to scientifically as pancreatin, is secured by the respondents through regular commercial channels and contains amylolytic and tryptic enzymes, capable respectively of converting 75 times their own weight of starch or casein (protein) under testing conditions prescribed in the United States Pharmacopeia. Triple strength apparently refers to the fact that, under U. S. P. standards, minimum enzymatic activity of one-third the foregoing rate is required in order to identify these glandular substances as pancreatin.

Two of the physicians called by the respondents orally outlined their theories as to the manner in which Lipan assertedly influences internal processes believed by them to be responsible for psoriasis in the first instance. Although their views differed in certain respects, their testimony indicates that they have subscribed to variants or facets of a theory first advanced many years ago, which hypothesized that a disturbance in the body's fat metabolism caused by some pancreatic deficiency or shortcoming is responsible for psoriasis. It is to be noted in this connection that one of these physicians, when attributing Lipan's efficacy to an ability to assist in the digestion of fats, entertained the erroneous view at the outset of his testimony that the pancreatin contained in Lipan had a "tryptic value" under which one gram would digest 75 grams of fat. Tryptic value is a scientific term used in designating the relative activity of trypsin, the enzymes assisting in the conversion of proteins, but it nowise applies to the relative activity of lipase, a fat digesting enzyme. Although pancreatin contains lipase, the latter's presence and activity do not appear to be standardized in preparations commercially available, and it is clear from the record that the pancreatic material prepared by the respondents' source of supply is no exception.

One of the foregoing doctors agreed, however, that most present day texts say the cause of psoriasis has not been fixed. The three physicians presented by counsel supporting the complaint in the course of the direct case, and another who was called by the respondents, affirm that the etiology of this disease is not known. Upon the basis of this record, there can be no question but that the great weight or consensus of informed medical opinion holds that the etiology of this disease still

awaits discovery. The only pathology, therefore, which has been heretofore established for psoriasis is one limited to skin surfaces. In the circumstances, such testimony as was directed to establishing authoritative theoretic bases in support of views that Lipan has therapeutic merit, must be regarded as entirely unconvincing.

The witnesses called by the respondents, in substantial part, base their evaluations of Lipan on observations made during the course of three series of clinical studies. Two of them, Dr. Bizzozero, who has attended respondent Louis L. Spirt and has assisted him in developing the preparation's formula and selecting its trade name, and Dr. Harris, together with another physician, jointly reported in two medical publications on clinical work conducted with two groups of patients. One group numbering 40 private patients was observed by Dr. Bizzozero, and Dr. Harris was primarily responsible for observations of the other, numbering 50. In addition to Lipan, local therapy in the form of boric acid ointment was utilized.

According to the reports, either complete regression or decided or moderate improvement occurred in 58% of the patients of the larger group and among the private cases, 77.5%. In the two series involving 90 patients, a total of 11 cases was reported to have enjoyed complete regression of symptoms and 24 others were deemed by the doctors to have experienced decided improvement. Cases differentiated as moderately improved total 25. In their earlier joint report, the doctors stated they felt that the method of treatment used should prove satisfying to the dermatologist, general practitioner, and patient. In the other report, likewise published after this proceeding was instituted, this conclusion does not appear and it states instead that, while results were encouraging, caution should be exercised in their interpretation due to the cyclical nature of this disease.

As to the third scientific witness called by the respondents, Dr. Combs' data on his clinical study relate to 48 cases. Additional patients participated who dropped out but their number is unknown, the record indicating in such connection that difficulty was encountered in inducing patients to continue treatment for extended periods of time without noting improvement. As a result of this clinical trial, he adjudged 43% of the patients to be cured and 20% as improved or fair, and he in effect stated that 37% represented failures. It was among those in a so-called A-Group of 21 patients involved in the study where the witness believed best results were achieved. Of this group, his testimony shows that approximately one-half dozen had no lesions on their last visit to the witness' office prior to his testimony. In some of the remaining cases, the doctor asserted that the lesions

cleared during the course of the study but it appears they recurred, either during the course of Lipan therapy or when it was not in use, but the witness felt the time interval before recurrence was sufficient to justify evaluations of some of them as cures.

Practically all of the patients were given conventional therapy such as radiation, local applications or other treatment in the course of the last study, and the record strongly suggests that, of those reportedly enjoying complete regression of lesions at the termination of the study, only one had not been treated with other therapy. Temporary regression or marked alleviation frequently follow use of any of various forms of radiation treatment and sometimes of other therapy, and as noted also, spontaneous cycles of remission and exacerbation are characteristic of the disorder. Assuming the accuracy of the doctor's observations and evaluations of his patients, so routinely were time-honored measures of conventional therapy afforded for some patients during the study, that doubts and reservations are fully warranted respecting its significance as an index to Lipan's attributes.

Turning now to the testimony of the dermatologists called in support of the complaint, one reported that he experimentally treated numerous cases of psoriasis with massive doses of Vitamin D and used large doses of B-1 without satisfactory response, and that results were similar with patients whose treatment consisted of desiccated pancreatic preparations in doses of 15 grains three times daily. Another based his opinions in part on his clinical experience with pancreatin, B-1 and Vitamin D separately, which were undertaken by the clinic of a large university with which he was then identified. He stated, in effect, that there were no satisfactory results and that none appeared during trial periods extending over several months with each patient when these three were administered in combination in the form of separate tablets.

The third dermatologist called in support of the complaint has engaged in clinical studies intermittently since 1939, variously using B-1, D, pancreatin and other preparations. In considerable part, his research was done during service with our Government and in its clinics, a circumstance which serves to point up the fact that psoriasis is in many respects a national problem. Illustrative of this is the interest of the Veterans Administration. Psoriatics draw as high as 80% to 60% disability payments and therapy for the disease likewise is costly. In 1941, the witness began clinical studies of pancreatic substances among a group of approximately 200 patients and used them in varying dosages without evidence of beneficial results. In connection with these, control or non-therapy groups of patients were established and simultaneously observed to assist in evaluating results. Later, in 1949, he began additional clinical trials with a substantial group of patients

using pancreatic extract, B-1 and Vitamin D in combination. The results there also were negative.

Stating that none of the witnesses called by counsel supporting the complaint had used Lipan in the course of their studies and experiments, the hearing examiner, when ruling on certain proposed findings, concluded that their testimony was based almost exclusively on theory. The circumstance that they did not use Lipan itself, however, is not controlling nor is it controlling that the record does not expressly show whether the enzymatic activity of the pancreatic extracts used by them has exceeded U. S. P. minimal standards. The record supports conclusions that pancreatin is pancreatin, so to speak, and there is no question but that the desiccated glandular products as used by the scientists called in support of the complaint and by respondents in preparing Lipan all come from regular commercial channels. The conclusion reached below that these physicians' testimonial knowledge is confined essentially to abstract theory, is manifestly erroneous.

I think also that their experience individually and in the aggregate is impressive. Their clinical work appears to have been carried on under conditions appropriate for evaluating the therapy under trial and part of it has utilized a methodology of controls tending to afford evaluations excluding the factor of spontaneous remission and exacerbation which is so characteristic of this capricious disease. Critical analysis of the record thus convinces me that the clinical evaluations of the witnesses appearing in support of the complaint have the greater weight and clearly outweigh the testimony of the respondents' witnesses, including that of the respondent Louis L. Spirt relating to his personal therapy. I, therefore, do not concur in the initial decision's view that there is inadequate record support for conclusions to the effect that Lipan will not constitute an effective treatment for psoriasis. While the record may not support a conclusion that the preparation is devoid of beneficial effects under all conditions of use, as contended by counsel supporting the complaint, the greater weight of the probative evidence does clearly show that Lipan will not be effective in clearing, even for temporary periods, all or substantial portions of the lesions of sufferers of psoriasis and that it cannot be relied upon in any manner to influence favorably the course of this disease or its symptoms. It is thus clear that the respondents' preparation will not constitute an effective treatment for psoriasis, and the hearing examiner should have so found. Not having done so, he was in error, and the Commission in failing to supply the finding is also in error. Likewise deficient is the order to cease and desist wherein future claims for product merit are not forbidden in any foregoing respect.

IN THE MATTER OF
RAY BUSCH AND PAUL MUELLER, JR., DOING BUSINESS
AS NATION-WIDE SEWING MACHINE AND SUPPLY
COMPANY

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

Docket 6117. Complaint, Aug. 7, 1953—Decision, Jan. 20, 1955

Order requiring partners in Chicago to disclose the country of origin conspicuously on Japan-made sewing machines and sewing machine heads they sold to retailers; to cease using the trade name "Universal" for their products; and to cease representing in advertising matter furnished to dealers a wholly fictitious price as the normal retail price.

Before *Mr. John Lewis*, hearing examiner.

Mr. William L. Taggaret and *Mr. Michael J. Vitale* for the Commission.

Mr. Daniel S. Tauman, of Chicago, Ill., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 7, 1953, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair and deceptive acts and practices and unfair methods of competition in commerce in violation of the provisions of said Act. The said respondents failed to file answer to the complaint and failed to appear at the time and place fixed for hearing. At said hearing before the above-named hearing examiner, theretofore duly designated by the Commission, the attorney in support of the complaint moved that the hearing be closed without the taking of testimony and that the hearing examiner proceed, in due course, to find the facts to be as alleged in the complaint and issue an order to cease and desist in the form set forth in the "Notice" portion of said complaint. It appearing that the aforesaid "Notice" provided that the failure of respondents to file timely answer and to appear at the time and place fixed for hearing would be deemed to authorize the Commission and the hearing examiner to find the facts to be as alleged in the complaint and to issue an order in the form therein set forth, the hearing examiner granted said motion and the hearing was thereupon closed. Thereafter, the proceeding regularly came on for final consideration by the said hear-