

IN THE MATTER OF

ADVANCE SPECTACLE COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6285. Complaint, Jan. 10, 1955—Decision, May 22, 1955*

Consent order requiring a Chicago firm to cease representing falsely in advertising that eyeglasses made according to prescriptions furnished by customers using its "14 LENS SAMPLE CARD" and other devices would correct defects in vision of all persons.

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

Mr. Frederick J. McManus for the Commission.

Froelich, Grossman, Teton & Tabin, of Chicago, Ill., for respondents.

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 Advance Spectacle Company, Inc., a corporation and Michael M. Egel, individually and as an officer of Advance Spectacle Company, Inc., hereinafter referred to as respondents have 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. Advance Spectacle Company, Inc., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its place of business located at 537 South Dearborn Street, Chicago, Illinois. Individual respondent Michael M. Egel is president and treasurer of corporate respondent and formulates the policy of said corporation and directs, controls and puts into effect all of its acts and practices including those hereinafter referred to. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now and for more than one year last past have been engaged in the business of selling eye glasses and as an inducement or instrumentality in the sale of said glasses make use of a certain device designated "14 LENS SAMPLE CARD" and other devices. Eye glasses are a device as "device" is defined in the Federal Trade Commission Act.

Respondents cause said devices, together with printed instructions for the use thereof, and an order blank upon which spaces are provided for the insertion of various measurements or figures obtained by the use of said devices, to be transported from their place of business in the State of Illinois to prospective purchasers and eye glasses to the purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein, have maintained a course of trade in said eye glasses in connection with the said "14 LENS SAMPLE CARD" and other devices and instructions for use thereof in commerce, between and among the various States of the United States.

PAR. 3. In the course and conduct of their business, respondents have disseminated and caused the dissemination of advertisements concerning said eye glasses and of the devices referred to above; by United States mails and by various means in commerce as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers and periodicals, and by means of circulars and form letters, for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said eye glasses; respondents have also disseminated and caused the dissemination of advertisements concerning their said eye glasses and the devices referred to above, including, but not limited to the advertisement media referred to above, for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said eye glasses in commerce as "commerce" is defined in the Federal Trade Commission Act.

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

EYE GLASSES BY MAIL

As Low as \$1.95

WRITE FOR FREE CATALOG

WITH 14 LENS SAMPLE CARD

Thousands of Customers

Est. 1939

Quality reading Magnifying

or bifocal glasses for

far and near.

Advance Spectacle Company, Inc.

537 South Dearborn Street,

Department SP-1

Chicago 5, Illinois

EYE GLASSES BY MAIL

Now buy attractive creations in

modern reading-magnifying or bifocal

(Pictorial representa-

tion of Pair of Glasses)

Complaint

51 F. T. C.

glasses for far or near from the oldest
established U. S. firm offering this
service! Thousands of customers coast
to coast! We furnish 14-lens sample card
with many combinations!

(Picture of
glasses)

as low as \$1.95

SEND NO MONEY!

30 DAYS TRIAL!

SEND FOR ATTRACTIVE
FREE catalog STYLES

NAME-----
STREET-----
CITY-----STATE-----DEPT. E-6
ADVANCE SPECTACLE CO., INC.
537 S. Dearborn St.,
Chicago 5, Ill.

DEAR FRIEND:

We're going to show you a way to make some good profits easily, simply and WITHOUT INVESTING ANY MONEY. We have had considerable experience in selling glasses direct to the wearer. This field has been profitable and you can cash in on it as so many others have. While we do not employ agents or canvassers to sell the glasses, we do have a number of attractive offers for you as a dealer.

Look in our catalog illustrating latest style of attractive quality spectacles. Note the reasonable prices quoted. We are willing to allow you, as a dealer, 25% discount from these prices.

* * * * *

Advance Spectacle Company

PAR. 4. Respondents' "Eye Glasses by mail" advertising disseminated by them as aforesaid is being and has been answered by persons in various States of the United States. Said purchasers, in answering such advertising, have requested that respondents' catalog and the various devices above referred to, for use in testing of the eyes, be sent them. Said catalog and device have been ordered alike by individuals desiring to purchase eye glasses for themselves and by other individuals desiring to sell glasses by acting as dealers of respondents. Individuals receiving respondents' "14 LENS SAMPLE CARD" have attempted to use the device to determine the eye glasses necessary to correct defects in their vision, have written out their own prescriptions for respondents' eye glasses upon the forms provided by respondent, have mailed the prescriptions to respondents and respondents have shipped to them the eye glasses ordered pursuant to said prescriptions.

Dealers of respondents, located in various States of the United States receiving respondents' said "14 LENS SAMPLE CARD" have attempted to use the device to determine the eye glasses necessary to correct the defects in the vision of others and have written prescriptions or assisted in the writing of prescriptions for respondents' eye

glasses upon the forms provided by respondents, have mailed the prescriptions to respondents and respondents have shipped said glasses ordered pursuant to said prescriptions to various customers.

PAR. 5. Through the use of advertisements containing the statements hereinabove set forth and explanatory literature and directions which accompany the eye testing device designated "14 LENS SAMPLE CARD" sent by respondents to those requesting it, respondents represented, directly and by implication, that the eye glasses sold by them, made pursuant to the results of the tests of the eyes, using respondents' device, will correct the defects in vision of all persons.

PAR. 6. Said advertisements were and are misleading in material respects and constitute "false advertisements" as this term is defined in the Federal Trade Commission Act. In truth and in fact the eye glasses sold by respondents, made pursuant to the results of tests of the eyes, using respondents' device will not correct defects in vision of all persons. On the contrary, such glasses are capable of correcting defects in vision of only those persons approximately 40 years of age and over who do not have astigmatism or diseases of the eye and who require only simple magnifying lens.

PAR. 7. The use by the respondents of the foregoing advertisements containing the false, misleading and deceptive statements and representations above referred to have had and now have the capacity and tendency to mislead and deceive substantial numbers of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the use of respondents' devices and the purchase of substantial quantities of respondents' eyeglasses, because of such erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of respondents, 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 "Decisions of the Commission and Order to File Report of Compliance," dated May 22, 1955, 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

The complaint in this proceeding charges the respondents Advance Spectacle Company, Inc., a corporation, and Michael M. Egel, individ-

ually and as an officer of Advance Spectacle Company, Inc., with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the Federal Trade Commission Act, in connection with the sale and distribution of eyeglasses through and by means of a self-testing device designated as "14 Lens Sample Card."

After the issuance of said complaint and the filing of their answer thereto, the respondents entered into a stipulation for a consent order with counsel for the complaint, disposing of all the issues in this proceeding, which stipulation was duly approved by the Director and Assistant Director of the Bureau of Litigation.

Respondents, pursuant to the aforesaid stipulation, admitted all of the jurisdictional allegations of the complaint and agreed that the record herein may be taken as if the Commission had made findings of jurisdictional facts in accordance with such allegations. Said stipulation further provides that the answer heretofore filed by respondents is to be withdrawn and that the parties expressly waive a hearing before the Hearing Examiner or the Commission, the filing of exceptions or oral argument before the Commission, and all other procedure before the Hearing Examiner and the Commission to which the respondents may be entitled under the Federal Trade Commission Act or the Rules of Practice of the Commission.

In said stipulation, respondents further agreed that the order to cease and desist issued in accordance with said stipulation shall have the same force and effect as if made after a full hearing, presentation of evidence and findings and conclusions thereon, and specifically waived all right, power and privilege to challenge or contest the validity of such order.

It was further provided that said stipulation, together with the complaint, shall constitute the entire record herein; that the complaint therein may be used in construing the terms of the order issued pursuant to said stipulation; and that said order may be altered, modified or set aside in the manner prescribed by statute for the orders of the Commission.

The Hearing Examiner has considered such stipulation and the order therein contained, and it appearing that said stipulation and order provides for an appropriate disposition of this proceeding the same is hereby accepted and made a part of the record, and the following jurisdictional findings made, and the following order issued:

1. Respondent Advance Spectacle Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its place of business located at 537 South Dearborn Street, Chicago, Illinois. Individual respondent,

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Order

Michael M. Egel, is president and treasurer of corporate respondent and formulates the policy of said corporation and directs, controls and puts into effect all of its acts and practices.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named herein, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents Advance Spectacle Company, Inc., a corporation, and its officers, and respondent Micheal M. Egel, individually, and respondents' agents, representatives and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of eyeglasses, do forthwith cease and desist from:

1. Disseminating, or causing to be disseminated, 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, that the eyeglasses sold by respondents, made pursuant to the results of tests of the eyes using respondents' devices, will correct, or are capable of correcting, defects in vision of persons unless expressly limited to those persons approximately forty years of age and older who do not have astigmatism or diseases of the eye and who require only simple magnifying lenses.

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 their eyeglasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains the representation prohibited in paragraph 1 hereof.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondents herein 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 [as required by said declaratory decision and order of May 22, 1955].

Order

51 F. T. C.

IN THE MATTER OF
JOSEPH TRINER CORPORATION

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

Docket 5227. Modified Order, May 26, 1955

Order modifying findings and order issued on June 27, 1945, 40 F. T. C. 668, in which the Commission found that respondent corporation had made false representations in advertisements and failed to reveal material facts, in connection with the sale of a medicinal preparation sold by it designated as "Triner's Bitter Wine", etc.

Mr. Joseph Callaway and Mr. Daniel J. Murphy for the Commission.

Kerner, Jaros & Tittle and Mr. Henry Junge, of Chicago, Ill., for respondent.

ORDER REOPENING PROCEEDING AND GRANTING IN PART AND DENYING
IN PART PETITION FOR MODIFICATION OF FINDINGS AND ORDER

This matter coming on to be heard upon petition of respondent Joseph Triner Corporation, filed February 25, 1955, to reopen the proceeding and to modify the findings as to the facts and order to cease and desist, and upon answer thereto filed by the Legal Adviser on Deceptive Practices, Bureau of Litigation, opposing in part, and interposing no objection in part thereto; and

The Commission having duly considered the matter and having concluded that respondent's petition for modification should be granted in part and denied in part, as hereinafter indicated, and that the proceeding accordingly should be reopened for that purpose:

It is ordered, That said petition to reopen be, and it hereby is, granted.

It is further ordered, That Paragraphs Four and Five of the Findings as to the Facts herein be modified by deleting from each of said paragraphs the phrase "poor appetite", that Paragraph Six in said Findings be deleted, and that Paragraph Seven thereof be renumbered as Paragraph Six.

It is further ordered, That the Order to Cease and Desist herein be modified by deleting from Paragraph 1 (a) thereof the phrase "poor appetite", by deleting Paragraph 2 in its entirety, and by renumbering Paragraph 3 as Paragraph 2 and deleting from said paragraph the

concluding clause "or which fails to comply with the requirements set forth in paragraph 2 hereof."

It is further ordered, That in all other respects respondent's petition for modification be, and it hereby is, denied.

Note.—Paragraphs "4," "5," "6," and "7" of the findings above referred to are modified by this order to read as follows:

"PAR. 4. Through the use of the foregoing statements and representations, and others of similar import and meaning not specifically set out herein, respondent has represented, and is now representing, that said preparation is a cure or remedy for stomach disorders, faulty digestion, headache, nervousness, fatigue, and insomnia; that it cleanses the stomach and intestines and keeps the intestines clean; and that it raises the general vitality of the body and increases the resistance of the body to germs, thereby preventing colds.

"PAR. 5. The foregoing statements and representations are false, deceptive, and misleading. Respondent's preparation is not a cure or remedy for stomach disorders, faulty digestion, headache, nervousness, fatigue, or insomnia, and has no therapeutic value in the treatment of such conditions in excess of providing temporary relief from headache when due to constipation. It does not cleanse the stomach. While it has the temporary effect of a laxative, it does not cleanse the intestines or keep them clean. It does not raise the general vitality of the body or increase the resistance of the body to germs. It has no beneficial effect in the prevention of colds.

"PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated and caused to be disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and that said preparation may be used at all times without ill effects, and into the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief."

The order to cease and desist, as modified, is as follows:

"This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

Order

51 F. T. C.

"It is ordered, That respondent, Joseph Triner Corporation, a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its medicinal preparation variously designated as 'Triner's Bitter Wine,' 'Triner's Bitter Wine with Vitamin B₁,' and 'Triner's American Elixir of Bitter Wine,' or any other preparation of substantially similar composition or possessing substantially similar properties, whether sold under the same names or any other name, do forthwith cease and desist from:

"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 is a cure or remedy for stomach disorders, faulty digestion, headache, nervousness, fatigue, or insomnia, or that it has any therapeutic value in the treatment of such conditions in excess of providing temporary relief from headaches when due to constipation.

"(b) That said preparation cleanses the stomach or intestines or keeps the intestines clean.

"(c) That the use of said preparation will raise the general vitality of the body, increase the resistance of the body to germs, or prevent or aid in the prevention of colds.

"2. Disseminating or causing to be disseminated, by any means, any advertisement 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, and the respective subdivisions thereof.

"It is further ordered, That the respondent shall, within 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."

Complaint

In the MATTER OF

SAMUEL GAILBAND, INC., ET AL.

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

Docket 6302. Complaint, Feb. 25, 1955—Decision, May 27, 1955

Consent order requiring a furrier in New York City with a branch in Los Angeles to cease violating the Fur Products Labeling Act and the Federal Trade Commission Act, by falsely invoicing furs as to the country of origin.

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

Mr. John J. McNally for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Samuel Gailband, Inc., a corporation, Irving Levine, individually and as president of said corporation, and Melvin Gladstone, individually and as vice president of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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 Samuel Gailband, Inc., is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at 372 Seventh Avenue, New York, New York, and with a branch store located at 635 South Hill Street, Los Angeles, California. Individual respondents Irving Levine and Melvin Gladstone are president and vice president, respectively, of said corporate respondent and in such capacities formulate, direct and control the acts, practices and policies of said corporate respondent. Individual respondent Irving Levine has the same office and principal place of business as corporate respondent and individual respondent Melvin Gladstone has the same office and principal place of business as the aforesaid branch store of corporate respondent.