

Decision

IN THE MATTER OF

BENJAMIN D. RITHOLZ ET AL. TRADING UNDER THE
NAMES OF CHICAGO INVISIBLE CONTACT
LENS SERVICE, ETC.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT*Docket 6155. Complaint, Dec. 30, 1953—Decision, Feb. 9, 1956*

Order requiring eight individuals, engaged in the sale of corneal contact lenses from their main office in Chicago and numerous branch offices in other States, to cease representing falsely in advertisements in newspapers, etc., that there was no feeling in the eye when their contact lenses were worn and that they could be worn all day without discomfort; that their lenses were safer than eyeglasses and provided better vision and that eyeglasses could be discarded upon purchase thereof; that their contact lenses were radically different from all others; and that the price of their lenses was reduced to \$50 from \$125 and \$150, and that the lenses were of the latter value.

Mr. Frederick McManus for the Commission.

Frank E. & Arthur Gettleman and *Mr. Benjamin D. Ritholz*, of Chicago, Ill., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that the respondents named in the caption hereof have violated the Federal Trade Commission Act by disseminating false and misleading advertising relating to corneal contact lenses which they manufacture and sell in commerce. Respondents filed an answer denying these charges. Thereafter hearings were held at which testimony and other evidence were received in support of and in opposition to the allegations of the complaint, duly recorded and filed in the office of the Commission. Thereafter proposed findings were presented by counsel.

Upon consideration of the entire record, the following findings are made:

1. Respondents Benjamin D. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Morris L. Ritholz, Fannie Ritholz, Sophie Ritholz, Jacob Bedno and Anna Bedno, individually and as copartners trading under the names of Chicago Invisible Contact Lens Service, D. C. Invisible Contact Lens Service, Pittsburgh Invisible Contact Lens Service, Fort Wayne Invisible Contact Lens Service, Flint Invisible Contact Lens Service, Lansing Invisible Contact Lens Service, King Optical Company, Midwest Scientific Company, and other

names, are engaged in the sale of corneal contact lenses, having their principal place of business located at 1148 Chicago Avenue, Chicago, Illinois. Respondents maintain numerous branch offices located in various cities scattered throughout the United States including Atlanta, Georgia; Birmingham, Alabama; Minneapolis, Minnesota; Kansas City and Springfield, Missouri; South Bend and Fort Wayne, Indiana; and Lansing and Flint, Michigan.

2. Respondents are now, and for some years last past have been, engaged in the manufacture and sale of corneal contact lenses and other optical supplies. Corneal contact lenses are designed to correct errors and deficiencies in the vision of the wearers, and are devices, as "device" is defined in the Federal Trade Commission Act. Respondents carry on their business through their branch offices in the following manner. Persons calling at the branch offices, unless they already have prescriptions, are referred to optometrists, who examine the eyes of such persons, write prescriptions and charge fees for such examinations. The prescriptions then are taken by such persons to respondents' branch offices and are forwarded by the branch offices to respondents' main office or factory in Chicago, where corneal lenses are prepared in accordance with the prescriptions. The lenses are sent back to the various branch offices, and are there fitted to the eyes of the individual customers. In transacting this business, respondents maintain a substantial course of trade in commerce.

3. In connection with their business respondents have disseminated advertisements concerning their said devices by the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, including advertisements in newspapers, circulars and pamphlets, for the purpose of inducing, and which were likely to induce, the purchase of said devices.

Among the statements contained in respondents' advertising matter, so circulated, are the following:

(1) An amazing new invention by Hornstein of Budapest has startled the optical world. His invention is on file in the United States Patent Office. It is comprised of a tiny glass disk, smaller than a dime and it is radically different from all contact lenses. There is no feeling in the eye from it.

Clinical tests on numerous persons in all walks of life, *over long periods of time*, give convincing proof that they can be worn all day long with complete comfort and that there is no feeling in the eye from them. * * * [Emphasis supplied.]

(2) Wear them every waking moment with ease and comfort.

(3) Floating fluidless contact lens are a natural for you if you wear glasses.

(4) Throw away your glasses.

(5) Worn by thousands from rising to bedtime.

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- (6) Wear new miniature "all day" corneal contact lenses.
- (7) Safer and better than glasses.
- (8) Can anyone be fitted with contact lenses? Almost anyone who wears glasses can secure the same or even better visual aid from Contact Lenses.
- (9) It takes very little time to become accustomed to them so that they may be worn indefinitely.
- (10) Remember you can now get these "all day" miracle lenses for \$49.95 a pair. They are the identical lenses others charge \$125 to \$200. You can save yourself \$75 to \$150. * * * The price now is only \$49.95.
- (11) Special introductory offer! \$125 to \$150 value reduced to only \$50.

4. Through these and similar statements respondents have represented that:

- (1) Respondents' lenses are a new invention and are radically different from other corneal lenses;
- (2) There is no feeling in the eye when respondents' contact lenses are worn, and that they may be worn all day without discomfort to the wearer;
- (3) Said contact lenses are safer than eyeglasses;
- (4) Said contact lenses provide better vision than eyeglasses;
- (5) Persons who purchase respondents' contact lenses can discard their eyeglasses; and
- (6) Respondents' lenses are of a value of \$150 to \$200 and have been sold by them and others for that amount, but have been reduced by respondents to \$50.

5. As to each of the aforementioned representations the facts are:

- (1) Respondents urge that the word "new" is a relative term, that it refers to something that has been in existence "but a short time." It is an indefinite expression. As was pointed out, we speak of the New Testament, although it is centuries old. We talk of new remedies, new eras and the new look—mostly in a most general way, without any specific period in mind. The word "new" does not carry any specific time limitation.

Various types of spectacles have been worn for centuries to give relief for defective vision. Certain types of contact lenses have been worn for several decades. Corneal contact lenses are of a later origin, and the Hornstein lens is one of the more recent modifications of the contact lens, so it is of comparatively recent origin. To describe it as "new" is therefore not beyond the bounds of the reasonable and ordinary application of that term.

But respondents add that their lenses "are radically different from other corneal lenses." Here they are using terminology that does have specific connotation. The word "radically" means completely, thoroughly, fundamentally. Respondents' corneal lenses are not *radically* different from other corneal contact lenses.

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Contact lenses fall into two general classifications—the scleral type which covers most, if not all, of the visible portion of the eyeball, and the corneal type, which covers a surface of the eyeball only slightly larger than the cornea itself. There are several varieties of corneal lenses.

The Hornstein lens is a convex plastic disc. The central portion, varying from 6 to 9 millimeters in diameter, is domed with a radius shorter than that of the cornea; surrounding this is a 3 to 5 millimeter flange which has a greater radius than the central portion, making it somewhat flatter so that it conforms closely to the curvature of the eyeball; the edge is rounded so that it will not be irritating. The radius of the central dome-shaped part of the lens may be varied to produce the necessary correction of vision required by the individual wearer. It also tends to create a vacuum, thus helping to hold the lens in place.

Many of the other corneal lenses have a uniform radius of curvature and fit more closely to the eyeball throughout. There may be other variations in detail, but all operate on the same principle and serve the same purpose. All can be made to provide the desired corrective effect on vision.

(2) Individuals differ, physically and psychologically. Some can wear the corneal lenses manufactured and sold by respondents with a reasonable degree of comfort. There is some sensation or feeling when contact lenses are first fitted, to which the wearer may later become insensitive, or which, on the other hand, may increase to such a degree that the lenses cannot be worn for any appreciable length of time. Some persons cannot wear contact lenses at all; some can wear them for a few hours only; while others, fewer in number, can wear them all day, even to the extent of discarding the eyeglasses formerly used. There is a wide variation in this respect, depending upon individual idiosyncrasies. There is no general rule applicable to all.

(3) Some persons, after becoming accustomed to corneal contact lenses, wear them for all purposes in place of eyeglasses and so discard the eyeglasses they had previously used; others use them for appearance' sake when engaged socially or professionally, retaining their eyeglasses for non-public occasions; still others use them in sports which involve physical contact because the corneal lenses, being of plastic, do not break or shatter as eyeglasses might. Again the question of comfort arises, and it cannot be said, as a general rule, that purchasers of corneal lenses can discard their eyeglasses.

(4) As to comparative safety, there is likewise no generally applicable rule. As stated above, corneal lenses, being of plastic,

will not shatter or easily break; they are less exposed to the danger of being struck by foreign objects than eyeglasses; they do not become fogged by sudden changes of temperature, and are not affected by perspiration, rain or other dampness. On the other hand, they may slip out of position at critical moments and, if not properly fitted, may cause abrasions and trauma. For all persons and all purposes they are not safer than eyeglasses.

(5) Eyeglasses provide opportunity for a wider range of adjustments than do corneal contact lenses because of the variety of simple lenses that may be used and because of the availability of dual corrections through the use of bifocal combinations. In some cases, particularly those involving malformation of the cornea, contact lenses provide improvement of vision not possible through the use of eyeglasses. It cannot be said of either device that in all instances and under all circumstances it is best.

(6) Respondents' corneal lenses do not have a value of \$150 or \$200, nor any other value in excess of that which respondents regularly and customarily charge, which, according to the evidence, varies from \$49.95 to \$75.00 per pair. There is no evidence to establish that identical lenses have been sold by respondents or by others for from \$125 to \$200. It does appear that there is much variance in the price which a purchaser may be required to pay for corneal contact lenses. Before a purchaser may procure respondents' lenses he is usually obligated to consult an oculist, optician or optometrist for examination and prescription. Respondents' advertised prices do not include these services, nor does the record show what these additional services ordinarily cost. A person with impaired vision might visit an oculist, optometrist or optician and be charged \$125, \$150 or more for complete services, including examination, prescription, treatment if necessary, lenses, fitting services and further necessary adjustments. He might be charged much less. Since the type and quantity of services that are furnished with lenses may vary widely, no basis exists for making price comparisons, and faulty conclusions may be drawn from the statements made by respondents.

CONCLUSIONS

On the basis of the facts of record as established by substantial, reliable and probative evidence, the conclusion must be reached that much of respondents' advertising is false and deceptive. Their lenses are not radically different from other corneal contact lenses; there is some feeling in the eye when they are worn, particularly when first worn; in some instances, corneal contact lenses may be

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worn without discomfort all day; in some instances eyeglasses may be discarded; in some instances contact lenses are safer and provide better vision than eyeglasses, but these are individual instances, and not of universal or even general occurrence as respondents' advertising would lead a prospective purchaser to believe. The prices advertised by respondents are not reduced prices, nor are identical lenses sold by others for from \$150 to \$200.

The use by respondents of the foregoing advertisements, and the false, deceptive and misleading statements contained therein, has had and now has the capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were and are true and into the purchase of respondents' corneal contact lenses because of such erroneous and mistaken belief.

The acts and practices of respondents herein found to be false and deceptive 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. Accordingly,

It is ordered, That Benjamin D. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Morris L. Ritholz, Fannie Ritholz, Sophie Ritholz, Jacob Bedno and Anna Bedno, trading under the names of Chicago Invisible Contact Lens Service, D. C. Invisible Contact Lens Service, Pittsburgh Invisible Contact Lens Service, Fort Wayne Invisible Contact Lens Service, Flint Invisible Contact Lens Service, Lansing Invisible Contact Lens Service, King Optical Company, Midwest Scientific Company, or any other name or names, their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of contact lenses, do forthwith cease and desist from directly or indirectly:

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 advertisements represent, directly, indirectly or by implication:

(a) That there is no feeling in the eye when respondents' contact lenses are worn;

(b) That respondents' corneal contact lenses can be worn all day without discomfort;

(c) That the wearing of respondents' contact lenses is always safer than the wearing of eyeglasses;

(d) That respondents' contact lenses provide better correction of defective vision than eyeglasses except in the cases of those persons who have malformation of the cornea;

(e) That eyeglasses can always be discarded upon the purchase of respondents' corneal contact 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said contact lenses, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the aforesaid respondents, in connection with the offering for sale, sale and distribution of contact lenses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That the difference between respondents' and all other corneal contact lenses is radical or fundamental;

2. That the price at which respondents' corneal contact lenses are offered for sale is a reduced price, unless such price is substantially less than the price at which the same lenses were being sold by respondents immediately prior to the announcement of such reduced price;

3. That any price at which respondents' contact lenses and services precedent and subsequent to the acquisition thereof are offered for sale represents a saving, unless such price is lower than that at which similar contact lenses and services are being offered by others in the same competitive area.

DECISION OF THE COMMISSION AND ORDER TO FILE
REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 9th day of February 1956, become the decision of the Commission; and, accordingly,

It is ordered, That respondents Benjamin D. Ritholz, Samuel J. Ritholz, Sylvia Ritholz, Morris L. Ritholz, Fannie Ritholz, Sophie Ritholz, Jacob Bedno and Anna Bedno, individually and as copartners trading under the names of Chicago Invisible Contact Lens Service, D. C. Invisible Contact Lens Service, Pittsburgh Invisible Contact Lens Service, Fort Wayne Invisible Contact Lens Service, and other names, 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 or desist.

Complaint

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IN THE MATTER OF
SIMON AND SCHUSTER, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT¹

Docket 5902. Complaint, June 29, 1951—Decision, Feb. 11, 1956

Consent order requiring a publisher in New York City to cease fixing and maintaining resale prices and terms and conditions of sale of the publisher's editions of books which it sold to its retail book seller customers while permitting book clubs to sell their own editions of the same books in competition with such retailers at any prices and on any terms they might determine.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Fletcher G. Cohn and *Mr. Lewis F. Depro* for the Commission.

Paul, Weiss, Rifkind, Wharton & Garrison, of New York City, for respondent.

Wolfson, Caton & Moguel, of New York City, for Book-of-the-Month Club, Inc., *amicus curiae*.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Antitrust Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Simon and Schuster, Inc., hereinafter referred to as respondent, has violated the provisions of Section 5 of the said Federal Trade Commission Act and Section 2 (a) of the said Clayton Antitrust Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), 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 these respects as follows:

COUNT I

PARAGRAPH 1. Respondent, Simon and Schuster, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 1230 Sixth Avenue, New York, New York.

¹ For consent settlement of Count III of complaint, see 48 F.T.C. 886.