

Complaint

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IN THE MATTER OF

VAISEY-BRISTOL SHOE COMPANY, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 6493. Complaint, Jan. 12, 1956—Decision, May 2, 1956*

Consent order requiring a corporate manufacturer of juvenile shoes and its advertising agency to cease advertising falsely in newspapers, magazines, etc., and by radio broadcasts, that said shoes were beneficial to the health of children, and to cease using the word "health" in referring to the shoes.

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

Mr. Daniel J. Murphy for the Commission.

Mr. Elmus L. Monroe, of Monett, Mo., 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 Vaisey-Bristol Shoe Company, Inc., a corporation, and Sam Vaisey and Joe McCaffery, individually and as officers of Vaisey-Bristol Shoe Company, Inc., Storm Advertising Company, Inc., a corporation, and Morry Storm, individually and as an officer of Storm Advertising Company, Inc., all hereinafter referred to as respondents, have 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. Respondent Vaisey-Bristol Shoe Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business at 100 Fifth Street, Monett, Missouri. Respondents Sam Vaisey and Joe McCaffery are president-treasurer and vice president-sales manager, respectively, of said corporate respondent Vaisey-Bristol Shoe Company, Inc., and these individuals formulate, direct and control the acts, policies and practices of said corporate respondent. Their addresses are the same as that of said corporate respondent.

PAR. 2. Respondent Vaisey-Bristol Shoe Company, Inc., is now, and has been for more than one year last past, engaged in the manufacture, sale and distribution of juvenile shoes designated "Jumping-Jacks" in commerce between and among the various States of the United States and in the District of Columbia.

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This respondent causes and has caused its said shoes, when sold, to be transported from its said place of business in the State of Missouri to purchasers thereof located in various other States of the United States and in the District of Columbia. This respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in its said shoes in commerce between and among the various States of the United States and in the District of Columbia, and is now, and at all times mentioned herein, has been in substantial competition in commerce with other corporations, firms or businesses similarly engaged in the manufacture, sale and distribution of shoes.

PAR. 3. Respondent Storm Advertising Company, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 72 East Avenue, Rochester 4, New York. This respondent is an advertising agency and as such is engaged in formulating, selling and advising its clients on advertising. Respondent Morry Storm is the president of said corporate respondent and formulates, directs and controls the acts, policies and practices of said corporate respondent; his address is the same as that of said corporate respondent.

These respondents are the advertising representatives of respondent Vaisey-Bristol Shoe Company, Inc., and prepare, edit and place advertising material used by respondent Vaisey-Bristol Shoe Company, Inc., in promoting the sale of shoes, including the advertising matter hereinafter referred to.

PAR. 4. Respondents act in conjunction and cooperation with one another in the performance of the acts and practices hereafter alleged.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of said shoes, respondents have made, and are now making, many statements and representations concerning the nature and usefulness of said shoes by means of radio broadcasts, advertisements in newspapers and magazines, folders, circulars, catalogs, labels on cartons in which the shoes are contained, and other advertising media. Among and typical of such statements and representations in said advertisements are the following:

Jumping-Jacks * * * to guide little feet through the formative years!

* * * to help steady young steps, guide little feet into proper walking habits!

Freedom to grow and develop—assured by Jumping-Jacks' finer, softer, flexible leathers!

* * * help tiny feet grow normally!

* * * Jumping-Jacks * * * that's the pair the doctors say they ought to wear,

Tiny arch and tiny toes stay strong and healthy while they grow!

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* * * what better assurance that your young prewalker's feet will grow straight and strong in flexible Jumping-Jacks Shoes!

* * * helps bones and muscles grow straight and strong. * * *, preventing foot defects!

* * * the healthful protection of Jumping-Jacks * * *

Yes, that's where good health starts, right on the ground with healthy feet!

* * * to help prevent foot defects, promote better health habits.

Yes, your child's feet will grow healthier, if they grow unhampered in Junior Jumping-Jacks.

* * * normal, healthy arch! Only Jumping-Jacks let your youngster's feet develop this way.

* * * helps your youngsters walk straighter!

PAR. 6. Through the use of the statements and representations herein above set forth and others of similar import not specifically set out herein, respondents have represented, directly or by implication, that the wearing of Jumping-Jacks Shoes will guide little feet through the formative years and into proper walking habits, assures that the feet will grow straight and strong and will develop normally, causes the arch and toes to stay strong and healthy, helps bones and muscles to grow straight and strong, promotes better health habits, prevents foot defects, helps youngsters walk straighter, improves and promotes the health of the feet and the general health; that respondents' shoes incorporate therapeutic and corrective devices and contain health features.

PAR. 7. The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact, respondents' shoes will not guide little feet through the formative years or into proper walking habits, will not have any significant beneficial effect on walking habits, cannot assure that the feet will grow straight or strong or will develop normally, will not have any significant beneficial effect on the growth or development of the feet, do not cause the arch or toes to stay strong or healthy, do not help bones or muscles to grow straight or strong, do not promote better health habits, do not prevent foot defects, do not help youngsters walk straighter, do not improve or promote the health of the feet or the general health; respondents' said shoes do not incorporate any therapeutic or corrective devices nor do they contain any features to justify representing them as a health product.

PAR. 8. The use by respondents of the foregoing false, deceptive and misleading statements and representations with respect to their 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 were true and to induce them, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' shoes and has placed

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in the hands of dealers in said shoes means and instrumentalities whereby they may deceive and mislead the purchasing public in the respects stated herein.

PAR. 9. The aforesaid acts and practices of respondents, as herein alleged, are to the prejudice and injury of the public and respondents' competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

INITIAL DECISION BY JAMES A. PURCELL, HEARING EXAMINER

The complaint in this proceeding, issued January 12, 1956, charges the respondents Vaisey-Bristol Shoe Company, Inc., a corporation existing by virtue of the laws of the State of Missouri, with its office and principal place of business located at No. 100 Fifth Street, Monett, Missouri; and Sam Vaisey and Joe McCaffery, individuals and as officers of Vaisey-Bristol Shoe Company, Inc., the address of the latter to coincide with that of the foregoing corporate respondent; and Storm Advertising Company, Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 72 East Avenue, Rochester 4, New York, and Morry Storm, individually and as president of the corporate respondent Storm Advertising Company, Inc., with the same address as that of the Storm Advertising Company, Inc., with unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Respondent Vaisey-Bristol Shoe Company, Inc., is engaged in the manufacture, sale and distribution of juvenile shoes designated "Jumping-Jacks" in commerce between and among the various states of the United States and in the District of Columbia; and respondent Storm Advertising Company, Inc., is an advertising agency and as such is engaged in formulating, selling and advising its clients on advertising and in this capacity acted as advertising representative of Vaisey-Bristol Shoe Company, Inc. in the preparation, editing and placing of advertising material more particularly set forth in the complaint herein, which said advertising constitutes the basis for the initiation of this action.

After the issuance of said complaint the respondents entered into an agreement for consent order with counsel in support of complaint, disposing of all the issues in this proceeding, which agreement was duly approved by the Director and Assistant Director of the Bureau of Litigation. It was expressly provided in said agreement that the signing thereof is for settlement purposes only and does not constitute

an admission by respondents that they have violated the law as alleged in the complaint.

By the terms of said agreement, the respondents admitted all 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. By said agreement the parties expressly waived a hearing before the hearing examiner or the Commission; the making of findings of fact or conclusions of law by the hearing examiner of the Commission; the filing of exceptions and oral argument before the Commission, and all further and 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.

By said agreement, respondents further agreed that the order to cease and desist issued in accordance with said agreement 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 any and all right, power or privilege to challenge or contest the validity of such order.

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

The hearing examiner has considered such agreement and the order therein contained, and, it appearing that said agreement and order provides for an appropriate disposition of this proceeding, the same is hereby accepted and is ordered filed only upon becoming part of the Commission's decision in accordance with Section 3.25 of the Rules of Practice.

Consonant with the terms of said agreement the hearing examiner makes the following findings as to jurisdictional facts:

1. That the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named therein.

2. That the named respondent in the complaint, Sam Vaisey is properly named Samuel B. Vaisey, and that the named respondent in the complaint, Joe McCaffery, is properly named Joseph A. McCaffrey. Both of the foregoing misnomers, as described, are to be remedied by issuance of the hereinafter contained order bearing the names of the respondents as corrected.

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3. That this proceeding is in the public interest, wherefore the following order is issued:

ORDER

It is ordered, That the respondent Vaisey-Bristol Shoe Company, Inc., a corporation, its officers and respondents Samuel B. Vaisey (otherwise known as Sam Vaisey), and Joseph A. McCaffrey (otherwise known as Joe McCaffery), individually and as officers of respondent Vaisey-Bristol Shoe Company, Inc., and Storm Advertising Company, Inc., a corporation, its officers and Morry Storm, individually and as an officer of respondent Storm Advertising Company, Inc., 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 respondents' shoes designated "Jumping-Jacks," or any other shoes of similar construction, irrespective of the designation applied thereto, do forthwith cease and desist from:

1. Representing, directly or by implication, that the wearing of respondents' said shoes:

(a) Will guide the feet through the formative years or into proper walking habits, or will have any significant beneficial effect on walking habits;

(b) Will assure that the feet grow straight or strong or develop normally, or will have any significant beneficial effect on the growth or development of the feet;

(c) Will cause the arch or toes to stay strong or healthy;

(d) Will help bones or muscles to grow straight or strong;

(e) Will promote better health habits;

(f) Will prevent foot defects;

(g) Will help youngsters walk straighter;

(h) Will improve or promote the health of the feet or the general health.

2. Using the word "health" or any other word or term of similar meaning, alone or in combination with any other word or words, to designate, describe or refer to respondents' shoes in such manner as to import or imply that respondents' shoes incorporate therapeutic or corrective devices or contain health features.

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 2nd day of May, 1956, become the decision of the Commission; and, accordingly:

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.

Decision

IN THE MATTER OF
MAHLER'S, INC., ET AL.ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6195. Complaint, Mar. 18, 1954—Decision, May 3, 1956*

Order dismissing, for failure to substantiate the allegations, complaint charging sellers in East Providence, R. I., with misrepresenting in advertising the effectiveness and safety of the device "Mahler Electrolysis Epilator," designed for the removal of superfluous hair by individual self-application.

Mr. Jesse D. Kash and Mr. William M. King for the Commission.
Letts & Quinn, of Providence, R. I., for respondents.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint in this proceeding charges that respondents have violated the Federal Trade Commission Act by the dissemination of false and deceptive representations in advertising material used to promote the sale and distribution in commerce of the Mahler Electrolysis Epilator, a device for the removal of superfluous hair from the human body.

After the filing of an answer, hearings were held in which testimony and other evidence were presented, duly recorded and filed in the office of the Commission, and proposed findings of fact, conclusions and orders were submitted by counsel. On the basis of the entire record, the following findings of fact are made:

1. Respondent Mahler's, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Rhode Island, having its office and principal place of business located at 3124 Pawtucket Avenue, Providence, Rhode Island.

Respondents Arthur Y. Mahler, Daniel J. Mahler and Harold C. Mahler are President, Vice-President, and Secretary-Treasurer, respectively, of the corporate respondent. Their office and principal place of business is the same as that of the corporate respondent. They formulate, direct and control the advertising, sales activities and policies of the corporate respondent. Respondent Arthur Y. Mahler is licensed under the laws of the State of Rhode Island to engage in the practice of electrolysis, and also teaches that subject.

2. The respondents are now, and for more than one year last past have been, engaged in the promotion, sale and distribution of a "device," as that term is defined in the Federal Trade Commission