

Decision

IN THE MATTER OF
CRAFTSMAN INSURANCE COMPANY

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

Docket 6394. Complaint, July 18, 1955—Decision, Jan. 14, 1957

Order requiring a Boston, Mass., insurance company to cease misleading advertising over radio and television, in newspapers, circulars, etc., concerning the coverage and benefits of its health and accident policies.

Mr. Donald K. King for the Commission.

Mr. David S. Kunian, of Boston, Mass., for respondent.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

This proceeding involves alleged violations by respondent insurance corporation of Section 5 of the Federal Trade Commission Act (hereinafter for brevity referred to as the Act), as that Act is amended by and is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U.S. Code, Sections 1011 to 1015, inclusive) (hereinafter for brevity referred to as Public Law 15).

This initial decision sustains the allegations of the complaint, which, in substance, charges respondent insurance corporation with having disseminated in interstate commerce by divers means during the three years preceding July 18, 1955, certain false, misleading and deceptive advertising concerning its health and accident insurance policies to the prejudice and injury of the public. These charges are hereinafter more fully stated and discussed in connection with the evidence relating thereto.

Respondent in its answer, while admitting certain allegations of the complaint, which refer to its corporate charter, policies issued by it, and the jurisdictions wherein it is and has been licensed, denies that any of its advertising was false, misleading and deceptive. It also denies that this proceeding is to the public interest. It further objects to the Commission's jurisdiction over the subject matter and pleads that while it obtains leads for prospective purchasers of insurance through advertising, it does not sell insurance through advertising but through the solicitation of duly licensed local agents in the several States wherein it is licensed, which agents, respondent avers, use its advertising material in connection with personal interviews with prospective purchasers to whom they also explain the policy to be purchased in detail before the application

is taken. Respondent further pleads in such connection that its practices alleged in the complaint to be illegal are in each and every instance subject to the primary jurisdiction of the Commonwealth of Massachusetts for the enforcement of laws regulating insurance and that under the broad powers of the Massachusetts Commissioner of Insurance, respondent's advertisements are fully regulated by him, subject further to the supplementary regulation of the other respective States in which respondent is licensed to do business. It is still further pleaded that no advertisement allegedly published by respondent did in fact deceive, or have any tendency to deceive any purchaser, or induce any such purchaser to purchase insurance; and that the words and phrases complained of in the advertisements of respondent had in substantial measure acquired a secondary meaning well understood in the insurance field.

As already briefly indicated, this initial decision finds generally that counsel for the Commission has established the material facts alleged in the complaint by a preponderance of the evidence and the order herein entered requires respondent to cease and desist from the violations herein found. There is no proof, however, as both parties agree,¹ sustaining any violation of law by respondent under the following allegations in Paragraph Three of the complaint:

Respondent has sold a substantial number of its said policies to insureds now residing in states other than those in which respondent has been duly licensed, as aforesaid, and respondent mails to such insureds or policyholders notices and receipts relating to the payment of renewal premiums and receives and accepts from such insureds or policyholders premiums mailed to it renewing the coverage purchased for the period of time covered by the premium submitted.

It further appears to the examiner that such allegations are not relevant or material to the violations as charged, particularly, inasmuch as the interstate nature of respondent's business is otherwise definitely established. Such portion of the complaint is therefore dismissed herein.

The complaint herein was filed July 18, 1955, and thereafter duly served upon respondent. Respondent in due course filed its answer on September 13, 1955. Thereafter, hearings were had in Boston, Massachusetts, on January 11 and 12, 1956, whereat counsel supporting the complaint presented his evidence in support thereof and rested his case-in-chief.² Respondent then orally moved to suspend the proceeding because of the trade practice conference proceedings relating to health and accident insurance then pending before the

¹ R., p. 157.

² R., p. 93.

Federal Trade Commission, which motion was promptly overruled.³ Respondent at the hearing then further orally moved to dismiss the complaint, both for lack of jurisdiction on the part of the Commission,⁴ and also for want of proof upon the merits upon various stated grounds.⁵ This motion was fully argued pro and con by respective counsel on January 12,⁶ and thereafter, pursuant to leave granted, respondent submitted a supporting brief. On April 25, 1956, after due consideration, the hearing examiner issued an interlocutory order denying the motion to dismiss *in toto* and reserving final decision on all matters until the final submission of the case. Respondent, having taken no appeal from either of the foregoing interlocutory orders, on May 4, 1956, duly elected to proceed with the presentation of its evidence under its answer. Such evidence was heard at Boston, Massachusetts, on June 4, 1956, and both parties rested, each waiving further arguments and briefs. Each party was authorized to file by July 16, 1956, proposed findings of fact, conclusions of law and order pursuant to Section 3.19 of the Commission's Rules of Practice for Adjudicative Proceedings.⁷ Such proposals were filed on July 10, 1956, by counsel supporting the complaint but respondent has submitted none.

The record in this proceeding is not long. The evidence consists of some 44 documentary exhibits and the testimony of four witnesses, William I. Newton, respondent's president, H. E. Bardin (Mrs. William I. Newton), its treasurer and secretary, Myron L. Silton, president of Silton Bros., Incorporated, respondent's advertising agency, and Robert T. Wetzler, respondent's comptroller. Since the contested legal issues of the Commission's jurisdiction over the subject matter and the existence of public interest in this proceeding are necessarily determined upon the basis of the decision herein made as to the merits of the case in support of the complaint, discussion and determination of such legal issues will follow the findings of fact. None of the material facts are in any real dispute.

The hearing examiner has given full, careful and impartial consideration to all the evidence presented, including all stipulations of fact, and to the fair and reasonable inferences arising from such facts, as well as to those facts pleaded in the complaint which are expressly admitted by the answer. And upon the whole record it is found that the complaint's material allegations are each and all established by a preponderance of the evidence, the examiner specifically finding as follows:

³ R., pp. 96-106.

⁴ R., pp. 121-132.

⁵ R., pp. 106-121.

⁶ R., pp. 96-133, 134-162.

⁷ R., p. 229.

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It is undisputed under the pleadings that respondent Craftsman Insurance Company is a corporation, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its office and principal place of business located at 137 Newbury Street, Boston, Massachusetts.⁸ It is also undisputed under the pleadings that respondent has issued the policies referred to in the complaint,⁹ and that it is licensed to conduct its insurance business in the States of Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, and West Virginia, and is not licensed to engage in the business of insurance in any state of the United States other than those named,¹⁰ except that in 1955 it was also licensed in the District of Columbia,¹¹ which is considered as a "State" as that term is used in Public Law 15.¹² On motion of counsel, Paragraph Three of the complaint was amended to include the District of Columbia.¹³

These admitted facts and relevant evidence in the record establish that respondent is now and was during the years 1953 through 1955, the period of time covered by the complaint, engaged as an insurer in the business of insurance in commerce as "commerce" is defined in the Federal Trade Commission Act. This basic fact is well established by the following evidence:

Respondent's business does not include the sale of life insurance or of general casualty lines but is limited to the sale of accident and health (including hospitalization) coverage.¹⁴ Its business is substantial.¹⁵ Premiums received by respondent on all policies issued by it totaled \$5,245,404 in 1953, and \$5,575,165 in 1954.¹⁶ The dis-

⁸ Complaint, Paragraph One, Answer, Paragraph One.

⁹ Complaint, Paragraph Two, Answer, Paragraph Two.

¹⁰ Complaint, Paragraph Three, Answer, Paragraph Three.

¹¹ R., pp. 55-56. The Complaint, Paragraph Three was amended to conform to this proof, R., p. 56.

¹² Public Law 15, 79th Congress, Section 5.

¹³ R., p. 56.

¹⁴ R., p. 15. It is officially noticed that this company is, and for many years has been chartered as a stock company, under which charter "Only accident and health and hospitalization coverage are written." Best's Insurance Reports, Fire and Casualty, 1955 Ed., pp. 301-302, id., 1956 Ed., pp. 307-308. References herein to Best's Insurance Reports are made and the facts recited therefrom are officially noticed herein because of the pre-eminence of those reports which are recognized both by regulatory officials and the insurance industry generally as being factually accurate and based upon official reports, and examinations, as well as other data furnished by the insurer itself, which latter matters are carefully verified by the publisher. Of course, as to any matter of official notice, "any party shall on timely request be afforded an opportunity to show the contrary" as provided by Section 7(d) of the Administrative Procedure Act.

¹⁵ "The company is one of the largest exclusive underwriters of individual accident and health insurance contracts in New England." Best's Insurance Reports, Fire and Casualty, 1956 Ed., p. 308; id., 1955 Ed., p. 301.

¹⁶ Bardin, R., pp. 62-63; Commission's 26-Z-13 and 27-Z-13.

tribution of its business in these years was quite substantial in the licensing States in the northeastern part of the United States with somewhat smaller premiums produced in the other States.¹⁷ Total claims paid in 1953 amounted to \$2,646,595, and \$2,750,146 in 1954.¹⁸ Of the business done in 1953, some \$2,339,879.46 was done in States other than Massachusetts,¹⁹ while in 1954 such business done by it elsewhere than in Massachusetts was \$2,248,914.37.²⁰ While the record does not disclose the number of policies which the company has issued, or has outstanding, or the precise amounts of the premiums charged,²¹ it must be inferred from the volume of business done by respondent that respondent has many thousands of policyholders throughout its licensed territory outside of Massachusetts. Respondent's business in each of such other States in 1953 and 1954, except in South Dakota, was stipulated to be substantial.²² The annual statements officially filed with the insurance commissioner of each State in which respondent is licensed shows the exact amounts.²³

The following various types of insurance policies covering accident, health or hospitalization, or two or more of such coverages in combination which were issued and sold by respondent during the period in question are in evidence (the number preceding each indicating the Commission's Exhibit numbers in the record): 1, Protector Accident; 2, Liberator; 3, Family Hospital Expense; 4, Employees Cooperative Benefit (Form 87 A); 5, Employees Cooperative Benefit (Form 87-A Occupational). Certain riders issued during this period which could be attached to any of such policies are also in evidence (the numbers preceding each indicating the Commission's Exhibit numbers in the record): 6, Surgical Operation Rider No. 138; 7, Surgical Operation Rider No. 139; 8, Surgical Operation Rider No. 138-F; 9, Surgical Operation Rider No. 139-F.

The general procedures followed by respondent during the period in question are: Respondent sells its said health and accident insurance policies through an agency system composed of some 500 agents, inclusive of about 25 general agents, each of which agents is individually licensed in the State or States wherein he acts for respondent.²⁴ These agents solicit prospective purchasers of respondent's

¹⁷ See Best's Insurance Reports, Fire and Casualty, 1954 Ed., p. 297 (for 1953); id., 1955 Ed., pp. 301-302 (for 1954).

¹⁸ Bardin, R., pp. 62-63; Commission's Exhibits 26-Z-4 and 27-Z-4.

¹⁹ Commission's Exhibit 26-Z-13.

²⁰ Commission's Exhibit 27-Z-13.

²¹ Exhibit 13, an agent's rate card as to Commission's Exhibit 1 was identified but was not then offered, R., p. 34, and was later withdrawn, R., p. 52.

²² R., p. 69.

²³ Commission's Exhibits 26-Z-13 and 27-Z-13.

²⁴ Newton, R., p. 15.

policies. If a sale is made, an application is completed by the agent and the prospect, and it is then mailed to the home office in Boston, Massachusetts, through the general agent.²⁵ As a general rule, if the application is accepted by the company, the policy issued is mailed back to the soliciting agent, who then delivers it to the insured. Occasionally, under special circumstances, the policy may be mailed directly to the insured.²⁶ The periodic premiums due on the policies issued are paid to the general agent by the policyholder through the mailing of premium notices and return envelopes, both of which are furnished by the home office to their field collecting offices who mail them to the insureds.²⁷ If a claim then occurs, the insured or his hospital fills out the claim form furnished with the policy and mails it to the home office. The claim is then processed and, if approved, a check is mailed from Boston either to the insured or to the hospital as the circumstances call for. In cases where the claim does not exceed \$250.00, it may be approved and paid by the respondent's general agent by means of a draft drawn against the home office.²⁸

In the course and conduct of respondent's business through the channels of interstate commerce, it has disseminated various types of advertising relating to its policies to the public into and in the States wherein it is licensed. And while not material to the issues decided herein, it also disseminated such advertising, at least through metropolitan newspaper circulation, into other States as well. By means of its television and newspaper advertising, respondent has reached more than a million listeners or readers beyond the boundaries of its domiciliary Commonwealth of Massachusetts, as well as many millions within that jurisdiction,²⁹ in addition to the substantial number of persons who were undoubtedly solicited in one manner or another by its 500 agents through the use of its advertising pamphlets, brochures and post cards prepared by respondent for agents. Siltan Bros., Inc., was and still is respondent's official advertising agency and during the years 1953 and 1954, respondent itself, or through such advertising agency published or caused to be published, certain advertising leaflets or brochures and news mats, copies of which are in evidence as Commission's Exhibits 1 to 12 and 14 to 19 inclusive.³⁰ These particular advertising materials were made available to the company's agents in 1953 and 1954 for their use in advertising and selling respondent's policies, and a number of each

²⁵ Newton, R., p. 18.

²⁶ Newton, R., p. 19.

²⁷ Newton, R., p. 20; Bardin, R., p. 65.

²⁸ Newton, R., p. 23.

²⁹ See Commission's Exhibit 30.

³⁰ Newton, R., p. 24; Siltan, R., pp. 67-68.

of them were requisitioned, used, delivered and exhibited to the purchasing public by such agents during this period in the several States wherein respondent was licensed.³¹ Such leaflets were of a size and character convenient for mailing as shown by the exhibits in evidence. Furthermore, in the presentation of its evidence, the respondent voluntarily produced certain direct mailing post cards to which were attached self-addressed and prepaid return business reply cards.³² These currently used post cards indicate that it was company policy for its agents to solicit business by mail and although they are a part of its current advertising program and not that of 1953 and 1954, they raise the fair inference that its agents had previously used mailings to prospects. Since there is no evidence that such mailings by agents were made across State lines, however, this method of advertising by the agents in no manner establishes any element of jurisdiction on the part of the Commission which interstate mailings would create.

During the years 1953 and 1954, respondent's agents also used other advertising media than brochures and the like as already briefly stated herein. For example, Walter H. Hennessey, respondent's general agent in Boston, Massachusetts, and also now the Chairman of its Board of Directors, sponsored "Pleasure Playhouse," a weekly television movie. Copies of several commercials used on this program are incorporated in the record as Commission's Exhibits 28 and 29. This program was televised over Station WBZ-TV of Boston, Massachusetts. The range of Station WBZ-TV covers parts of Massachusetts, Rhode Island, Connecticut, New Hampshire, and Maine.³³ Respondent and its agents also ran advertisements of respondent's policies in various newspapers. Samples of such advertisements are contained in the record as Commission's Exhibits 31 to 36, inclusive. These advertisements were published at various times during the years 1953 and 1954³⁴ in several Massachusetts newspapers, one of which, the Boston Globe, certainly had substantial dissemination in many States beyond the boundaries of Massachusetts.³⁵

The gist of this proceeding is the charges that respondent during the three years prior to filing of the complaint through various media had disseminated in interstate commerce, "among others of similar import and meaning, not herein set out," certain specified types of

³¹ R., p. 50.

³² Respondent's Exhibits 6, 7 and 8. Statements made in these exhibits are not under attack and are not considered in the determinations herein made.

³³ Commission's Exhibit 30, R., p. 71.

³⁴ R., pp. 75-77.

³⁵ Commission's Exhibit 38.

advertisements relating to its health and accident insurance policies, which advertising represented directly or by implication to the purchasing public that such policies afforded certain coverages, benefits and advantages, which advertisements were in fact false, misleading and deceptive, and that such advertisements have had and now have the tendency and capacity to mislead and deceive, and have misled and deceived a substantial portion of the purchasing public.³⁶

In hearing this proceeding for the Federal Trade Commission in the first instance, the hearing examiner has carefully considered all the relevant evidence and inferred and concluded therefrom that respondent's advertising, as hereinafter discussed in some detail, does not correctly and clearly convey to the general public the many exceptions to, and limitations upon, the coverage actually contained in respondent's health, accident and hospitalization policies so advertised and that therefore such advertising is found to be false, misleading and deceptive in violation of the Act. Each of the policies has been compared to the advertising related thereto and each separate piece of advertising has been fairly considered in its entirety and conclusions reached therefrom as to the overall impressions which it creates. This has been done in strict accordance with general tenets of law which govern the interpretation of advertising in Federal Trade Commission proceedings, as well as upon specific precedents relating to insurance advertising contained in decisions which recently have been promulgated by the Commission.³⁷ The fact that respondent's agents are trained to explain, and the claim that they actually do explain the policies to each prospective buyer thereof prior to purchase, do not vitiate or dispel the illegality of any of respondent's advertising which is in fact false and misleading in character. The law is violated if the very first contact or interview is secured by deception.³⁸ Nor does the "Welcome to membership," brochure, Commission's Exhibit 25-A, which is issued over the president's signature and dated and signed by the authorized representative of the company, do anything to remove any initial deception which has been practiced upon the buyer by the various types of false advertising which he may have read or heard. The language of this brochure, explaining to the new policyholder both "What You Get" and "What You Don't Get," and providing for a personal check by the policyholder himself, if he so desires, of each of the items

³⁶ Complaint, Paragraphs Four to Eight, inclusive.

³⁷ *American Hospital and Life Insurance Company*, Docket No. 6237, April 24, 1956; and *National Casualty Company*, Docket No. 6311, May 21, 1956.

³⁸ *F.T.C. v. Standard Education Society* (1937), 302 U.S. 112, 115-117; and *Carter Products v. F.T.C.* (C.A. 7, 1951), 186 F. 2d 821, 824, and cases cited.

listed under both headings, only emphasizes the respondent's earlier failure to properly point up and clarify such matters in its initial advertising. It may well be doubted if the average person untrained in business could verify correctly just what his insurance actually provided for.

It is further contended by respondent that there is no proof to sustain the allegation that its advertisements actually have misled and deceived any of the purchasing public. There is no such express proof, it is true, but this is also immaterial. It is well settled that proof of actual deception of the public is not necessary to sustain a complaint under Section 5 of the Act.³⁹ The law on this subject has been very recently succinctly restated and affirmed by the United States Court of Appeals for the Second Circuit:⁴⁰

* * * The Commission is not required to sample public opinion to determine what meaning is conveyed to the public by particular advertisements. *Zenith Radio Corporation v. Federal Trade Commission*, 7 Cir. 1944, 143 F. 2d 29, 31; see also *New American Library of World Literature v. Federal Trade Commission*, 2 Cir. 1954, 213 F. 2d 143, 145. The Commission, which is deemed to have expert experience in dealing with these matters, *Federal Trade Comm'n v. R. F. Keppel & Bro., Inc.*, 1934, 291 U.S. 304, 314, is entitled to draw upon its experience in order to determine, in the absence of consumer testimony, the natural and probable result of the use of advertising expressions. *Siegel Co. v. Federal Trade Comm'n*, 1946, 327 U.S. 608, 614; *Federal Trade Comm'n v. Hires Turner Glass Co.*, 3 Cir. 1935, 81 F. 2d 362, 364 * * *.

The contention of respondent that "The words and phrases complained of in the advertisements allegedly published by Respondent had in substantial measure acquired a secondary meaning well understood in the insurance field,"⁴¹ is likewise wholly immaterial since it is not the limited function of the Commission under the Act to protect merely those who are highly educated and trained experts, such as those skilled in the customs and terminology of the specific insurance field involved herein, but it is its duty to protect the entire general public, "including the ignorant, the unthinking and the credulous."⁴²

³⁹ *Parker Pen Co. v. F.T.C.* (C.C.A. 7, 1946), 159 F. 2d 509; *Progress Tailoring Co. v. F.T.C.* (C.C.A. 7, 1946), 153 F. 2d 103, 105; *Charles of the Ritz Distributors v. F.T.C.* (C.C.A. 2, 1944), 143 F. 2d 676, 680, and numerous authorities cited in these decisions. And see particularly, the Commission's recent decision applying this principle specifically to cases involving false and misleading advertising of health and accident insurance policies. "Opinion of the Commission," pp. 2-3, issued May 21, 1956, in *National Casualty Company*, Docket No. 6311.

⁴⁰ *E. F. Drew & Co., Inc. v. F.T.C.* (July 13, 1956), not yet reported in *Federal Reporter*, Second Series), affirming the Commission's cease and desist order as voluntarily modified by it pendente lite.

⁴¹ Answer, Affirmative defenses, Para. Ten.

⁴² *Aronberg t/a Positive Products Co., etc. v. F.T.C.* (C.C.A. 7, 1942), 132 F. 2d 165, 167.

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The complaint grouped the challenged representations made by respondent in its health and accident insurance advertising into five categories, respectively stating or implying: (1) that respondent's policies are maintainable in force at the option of the insured by his timely payment of renewal premiums; (2) that respondent will never take into consideration the physical condition of insured as it was prior to or at the time the policy was issued; (3) that the payment of benefits start with the first day and continue for sixty days in the case of any accident or sickness; (4) that the insured is provided with indemnification for a totally disabling injury by certain monthly cash payments, plus certain lump sum payments in event of death or loss of sight or limbs; and (5) that insured is indemnified for the payment of hospital expenses incurred for himself or any member of his family in an amount up to \$12.00 per day, plus an additional amount up to \$1000.00 for the cost of any operation.

The following evidence establishes the false, misleading and deceptive character of respondent's advertising of its health and accident insurance policies in each of such five categories:

As to the first category, examination of the policies in evidence shows that none of them can be continued at insured's option by the timely payment of renewal premiums, but on the contrary any of respondent's policies may be terminated by respondent at the end of any premium period by respondent for any reason or for no reason at all.⁴³ Furthermore, it is officially noticed that the respondent in its recent and current new business does not write any non-cancellable policy. "Non-cancellable contracts are not issued but a few old contracts written on this basis remain outstanding."⁴⁴ That it may not, and that its actual practice is not, to terminate policies held by its policyholder is immaterial. Respondent has the legal power to do so and the advertisements do not fairly reflect the actual terms of the policies. The respondent's advertising has included numerous statements which represent either directly or by implication that its policies may be continued at the sole option of the insured for his entire life or for a specified number of years by the timely payment of the renewal premiums provided by the policy. Such type of statements include: "No age limit";⁴⁵ and "Rates and benefits never to change for the life of your membership";⁴⁶ "Full benefits regard-

⁴³ Commission's Exhibits 1-5.

⁴⁴ Best's Insurance Reports, Fire and Casualty, 1955 Ed., p. 301; id., 1956 Ed., p. 308.

⁴⁵ Commission's Exhibit 37 (Advertisement in Boston Globe); Commission's Exhibits 28-B and 29-B (Television commercial script broadcast over Station WBZ-TV, Boston, Mass.).

⁴⁶ Commission's Exhibits 31-34 (newspaper advertisements).

less of age";⁴⁷ "Adults ages 18 to 54, inclusive."⁴⁸ That statements of this general type are definitely misleading is established by the condemnation thereof in *National Casualty Company, supra*.⁴⁹

As to the second category, respondent's advertising repeatedly uses the statement: "No medical examination required."⁵⁰ This statement is wholly unqualified as to time, condition or circumstances. To the uninformed prospective buyer of insurance, this statement would quite probably have the meaning that there would never be any question raised by respondent concerning the insured's physical condition prior to or at the time the policy was issued and that payments for any physical disability he might make claim for under the policy would depend upon his physical condition at the time such claim was made and thereafter. In each of respondent's policies, however, there is provision that no benefits will be paid for losses resulting from accident or from accident and sickness as the case may be, occurring and originating prior to the effective date of such policy or in the case of sickness under certain policies, Commission's Exhibit 2, "Such benefits will be paid only when the cause originates 30 days after the policy is in force." This statement also is therefore definitely misleading and deceptive.⁵¹

As to the third category, respondent's "Employees Cooperative Benefit Policies" do not cover every case of sickness and accident as each of such policies excludes certain coverage, among them cases of attempted suicide, or self-injury, injury or sickness contracted outside the United States or Canada, or in military or naval service, or injury and sickness originating prior to the effective policy date.⁵² In its advertising of such policies, however, respondent has used the following statements: "Benefits start with the first day and continue up to sixty days for any one accident or sickness,"⁵³ and "Pays benefits up to sixty days for any one accident or sickness."⁵⁴ Such representations are false, misleading and deceptive since they

⁴⁷ Commission's Exhibits 14 and 15 (leaflets).

⁴⁸ Commission's Exhibit 10 (leaflet). These particular representations are definitely distinguishable from the qualified and definite statements found to mean only that benefits were not to be reduced on account of increasing age in *American Hospital and Life Insurance Company*, Docket No. 6237, *supra*, "Findings as to the Facts, Conclusion and Order," pp. 3-4 (Par. 6), April 24, 1956.

⁴⁹ "Initial Decision," Dec. 6, 1955, "Findings as to the Facts," Nos. 9-11, pp. 3-4; affirmed by "Opinion of the Commission," pp. 2-4, and its "Final Order," p. 3, Par. 1 of substituted order.

⁵⁰ Commission's Exhibits 11 (leaflet), 16 (advertising mat), 32 (newspaper advertisement in Boston Globe), and 28-B and 29-B (commercial television scripts).

⁵¹ See *National Casualty Company, supra*, Initial Decision, p. 4, Par. 12-14, approved by Final Order of the Commission, p. 3, Par. 2.

⁵² Commission's Exhibits 4 (p. 3) and 5 (p. 3).

⁵³ Commission's Exhibit 18-G (brochure).

⁵⁴ Commission's Exhibit 19-G (brochure).

definitely state that "any one accident or sickness" is covered without any qualification or limitation whatsoever.

As to the fourth category, in the advertisements pertaining to respondent's "Protector Policy,"⁵⁵ it is represented to the public that such policy provides indemnification for a totally disabling accident for a period of one day up to five years and in addition thereto, certain lump sum payments in event the insured should suffer loss of life, sight or limb. Such advertisements are the following:

PROVIDES—

For totally disabling accident from 1st day up to 5 years -----	\$ -----
	per month
50% additional for hospital confinement or nurse care at home for 2 months -----	\$ -----
	per month
For accidental death -----	\$ -----
	per month
For accidental loss of two members (hands, feet, eyes) 10 times the monthly rate -----	\$ -----
	per month
For accidental loss of one member 5 time monthly rate ---	\$ -----
	per month ⁵⁶

Up to \$200.00 per month for totally disabling accidents from first day up to 5 years.

Up to \$300.00 per month for hospital confinement or nurse care at home for 2 months.

Up to \$2000.00 for accidental death or loss of eyes, feet, hands.⁵⁷

These representations are false, misleading and deceptive since they do not in any way negative the fact that under such policies such benefits are in the alternative and that only one of such benefits may be received but not two or more of them. That such representations might be misleading and could be materially clarified if rewritten, was substantially recognized by one of respondent's officers.⁵⁸

As to the fifth category, respondent's "Family Hospital Plan Policy,"⁵⁹ does not provide indemnification in the form of cash benefits at a rate of up to \$12.00 per day for the payment of hospital room and board and up to \$1,000.00 for surgical operations whenever the insured or a member of his family incurs any such expense by reason of injury or sickness. Such policy specifically provides that hospital benefits will only be paid for sicknesses originating after the policy has been in effect for thirty days, and that certain operations

⁵⁵ Commission's Exhibit 1.

⁵⁶ Commission's Exhibit 10 (brochure).

⁵⁷ Commission's Exhibit 12 (news mat).

⁵⁸ Wetzler, R., pp. 209-212. This type of loose advertising of alternative benefits was condemned by the Commission in its opinion in *American Hospital and Life Insurance Co., supra*, "Findings as to the Facts, Conclusion and Order," pp. 5-6, Par. 9.

⁵⁹ Commission's Exhibit 3.

involving the removal of certain specified glands or organs are only covered after a waiting period after the policy has been in force six months. Furthermore, the policy, for example, when combined with Commission's Exhibit 6, "Surgical Rider No. 138," provides for the payment of \$1,000 for expenses of operation only when the insured loses two members. In the scheduled list of some 150 other operations, \$500.00 is payable for operations due to the loss of one member, a few special types of operations pay \$150.00 each, and for the numerous remaining operations the respondent pays from \$125.00 down to \$5.00 each, as provided in the rider's schedule. The respondent, however, has advertised very broadly and without clarification in numerous newspaper advertisements and television commercial broadcasts that such a policy will pay hospital bills in an amount up to \$12.00 per day for any member of insured family, and up to \$1000.00 for the cost of any operation.⁶⁰ Such types of vague advertisements of maximum sums have been determined by the Commission to be false and misleading,⁶¹ if they do not make clear disclosure of what amounts actually will be paid for any such service. This representation to the public is false, misleading and deceptive.

The evidence discloses that Edward P. Goodnow, the long-time former president of the company, during his tenure had personally formulated and directed its advertising policy⁶² but that in October, 1954, he retired and removed from Boston. He was replaced as president by William I. Newton, who had theretofore been respondent's Vice President and Secretary.⁶³ Respondent under Newton's presidency, it is claimed, has abandoned its former advertising practices,⁶⁴ as it is now seeking to control its general agents in their advertising methods, and is no longer attempting to describe either the merits and coverage, or the exceptions and limitations of any type of policy issued and sold by it. It is also conducting research looking to the adoption and use of general "institutional" or "good will" types of advertising, which those in charge of its advertising believe will accord to sound underwriting policies and the persistency of its acquired business.⁶⁵ Respondent therefore contends that this proceeding should in any event be dismissed.⁶⁶

⁶⁰ Commission's Exhibits 28-B, 29-B (television broadcast), and 31 to 37, inclusive (newspaper ads).

⁶¹ See "Opinion of the Commission," pp. 4-5, and "Final Order," p. 4, Par. 3, in *National Casualty Co.*, following its prior decision in *American Hospital and Life Insurance Company*, *supra*.

⁶² Sifton, R., pp. 79-80.

⁶³ Newton, R., pp. 11-12.

⁶⁴ Sifton, R., pp. 84-89.

⁶⁵ Newton, R., pp. 219-220; Sifton, R., p. 81.

⁶⁶ Respondent's counsel's Brief in Support of Motion to Dismiss, pp. 17-18; and Oral Argument on Motion to Dismiss, R., pp. 129-132.

In considering such contention, it is necessary to consider all of the relevant evidence and the fair and reasonable inferences arising therefrom. While there is no direct evidence that respondent intends to renew generally its former advertising practices, there is no definite assurance that it will not again use the types of advertising herein found violative of the Act if not restrained by a cease and desist order issued by this Commission. There is no confession of error nor even a slight sign of contrition on the part of respondent's management regarding such former advertising. To the contrary, in its answer,⁶⁷ and in its counsel's oral argument⁶⁸ and brief,⁶⁹ respondent not only denies that such advertising is false, misleading and deceptive, but it affirmatively urges that the advertising complained of was entirely proper and non-deceptive. Two very significant examples of this attitude are:

Nothing in the advertisements allegedly published by respondent did in fact deceive or have any tendency to deceive any purchaser nor induce any purchaser to purchase that which he did not intend to buy.⁷⁰

Respondent's Advertising Does Not Deceive or Mislead. * * * *At the outset it can be stated, without qualification that respondent's advertising is true. . . . We concede the advertising pieces in issue do not endeavor to explain every limitation and condition of the product to which they refer. To do so would be to defeat their very purpose which is to highlight the major advantages of respondent's policies.*⁷¹ [Emphasis supplied.]

This latter example unfortunately is typical of the viewpoints of many strictly commercial concerns in their advertising practices. It reflects only the business interests of the seller and utterly disregards the interests of the purchasing public, which it is the clear statutory duty of this Commission to protect. This duty rises to the highest character when the importance of an insurer correctly advertising personal insurance coverage sold by it is fully considered. Insurance is not a tangible product which is the subject of barter and sale in the ordinary dealings of the market place, but by and large it is an intangible commodity of contingent future benefit which is purchased only to protect the insured and his dependents from the serious economic losses which may result from the numerous and varied hazards of modern day life. It is wholly unlike buying a tangible article which is capable of replacement. One who has sustained a severe injury or illness, with resultant disability, or one who has attained

⁶⁷ Answer, Paragraph Four, denying Paragraph Four of the Complaint, Paragraph Six, denying Paragraph Six of the Complaint, Paragraph Seven; Affirmative Defense (in Answer), Paragraph Nine.

⁶⁸ R., pp. 106-121 especially, 113, 117, 120, 121.

⁶⁹ Respondent's Brief in Support of Motion to Dismiss, pp. 15-18.

⁷⁰ Answer, p. 6, Affirmative Defenses, Paragraph Nine.

⁷¹ Respondent's Brief in Support of Motion to Dismiss, pp. 15, 16, 17.

certain advanced years, or has otherwise become an uninsurable risk is usually precluded from the purchase of other policies of health and accident insurance to cover his needs when the policy he has carried for many years proves to be inadequate or is cancelled by the insurer for any reason.

To deny a dismissal on this particular ground of abandonment is certainly not to say that respondent is not fully privileged to plead, argue and prove any legal defense, either in denial or by way of avoidance, of the case stated in the complaint or proved thereunder. But respondent, having pursued the course of action and defense which it has, is now in no position under the Act to take advantage of any decision such as that of *Argus Cameras*, Docket No. 6199, upon which it expressly relies,⁷² but which decision is based upon an entirely different state of facts and a vastly dissimilar concept of the law than that erroneously urged by respondent here. Such a distinction is aptly pointed out in the very recent decision of the Commission, *H. J. Heinz Company, et al.*,⁷³ wherein the relevant decisions and principles governing dismissals on the ground of discontinuance of the practices whereon the proceeding is based are so well and thoroughly reviewed that reference to more than but one additional authority on this point is deemed unnecessary. The Commission there held:⁷⁴

In *Argus Cameras*, Docket 6199, 1954-55 Trade Cases § 25,196, the Commission pointed out that dismissal of a complaint because of discontinuance of claimed illegal practices should not be done unless there is a clear showing of unusual circumstances which in the interest of justice requires it. In that case, the Commission found that the course of dealing over the years between Federal Trade Commission representatives and Argus was such as to justify respondent in the belief, prior to the issuance of the complaint that no challenge was being made to its practices. It also appeared that respondent discontinued the practices promptly after the complaint was filed "In order to comply with the direction of the Commission" and filed affidavits agreeing to refrain in the future from the acts complained of.

In the present case, it is clear that respondents did cease the practices complained of prior to the issuance of the complaint and have not renewed them. Nevertheless, they have at all times insisted that their course of conduct did not violate the law. No affidavits or statements appear in the record indicating a clear intention to refrain from the practices found to exist. The fact that the Co-op now occupies a strong position in the industry as a bargaining agent is a circumstance to be considered, but we do not consider it sufficient. No criticism is to be made against respondents for vigorously defending the position they had taken. This, of course, they had a right to do.

⁷² Oral argument, R., p. 129; Brief in Support of Motion to Dismiss, p. 18.

⁷³ Docket No. 5994, Opinion of the Commission by Chairman Gwynne, issued June 29, 1956, pp. 14-17.

⁷⁴ Id., p. 17.

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Our conclusion simply is that the facts in this particular case do not warrant a dismissal without prejudice; on the other hand, we think an order based on the findings should be issued.

While the facts in all cases naturally differ somewhat, the Commission's recent decision in *National Casualty Company* is illustrative of how the foregoing general principles are now being applied specifically by the Commission to proceedings involving false, misleading and deceptive advertising of health and accident insurance.⁷⁵

The contention that the proceeding is moot and devoid of public interest because of discontinuance of use of certain of the representations is likewise without merit. As pointed out by the examiner, dismissal of a proceeding on the ground of discontinuance is discretionary with the Commission. In the exercise of its discretion, the Commission must necessarily consider, among other things, whether there is a likelihood that the practice found to have been unlawful will be resumed in the absence of an order prohibiting it—and this, in turn, is governed by "all the facts which include the attitude of respondent towards the proceedings, the sincerity of its practices and professions of desire to respect the law in the future and all other facts." *Eugene Dietzgen Co. v. Federal Trade Commission*, 142 F. 2d 321, 330 (C.A. 7, 1944), cert. denied, 323 U.S. 730. The record discloses that of the 45 separate pieces of advertising material introduced into evidence, containing statements of the kind alleged in the complaint to have been deceptive, 28 were still being used as of the date the complaint was issued. Moreover, it has been the respondent's contention throughout this proceeding that its advertising, including advertising it no longer uses, has not been deceptive or in any manner unlawful; and the respondent has offered no assurances of any kind that it will not resume the use of all of the questioned representations once this proceeding is disposed of.

The record in the proceeding at bar may easily be distinguished from that in *Argus Cameras, supra*. The present record does not disclose just when the advertising matter complained of was discontinued, whether in whole or in part before the complaint issued on July 18, 1955, or entirely thereafter, although respondent's research into new advertising methods was begun "before there was any threat of Federal Trade Commission investigation or regulation."⁷⁶ There is also even some indication in the record from the use of the present tense by counsel and witness that some of the questioned printed advertising matter is still being prepared by the company and distributed to its agents⁷⁷ despite certain direct general testimonial statements of respondent's officers and its advertising agent that it has been discontinued.⁷⁸ And some of the current

⁷⁵ Docket No. 6311, Opinion of the Commission, p. 3, dated May 21, 1956.

⁷⁶ Sifton, R., pp. 81-82.

⁷⁷ Newton, R., pp. 52-53.

⁷⁸ Respondent's advertising representative Sifton says that the proposed new program of advertising has not yet gone into effect and that his firm is "in the process of doing that now" to take the place of the old advertising in evidence "which has been junked," R., pp. 80, 81; see also Wetzler, R., pp. 193-197; Newton, R., p. 220.

advertising received in evidence upon respondent's own offer is quite objectionable.⁷⁹

Respondent's advertising agent also still claims that the advertising challenged herein was never intended to be deceptive and misleading and concedes, in effect, his inability to decide what advertising is deceptive by his volunteer statement, "Whether it was found to be so in fact under the law is something, of course, that I cannot say."⁸⁰

Since respondent is quite apparently dependent in large measure on the judgment of its advertising agency in connection with its future advertising program, and such agency is not positive as to what constitutes legal advertising or illegal advertising, it appears that the guidance of the Commission's cease and desist order herein entered may incidentally benefit the respondent, as well as to accomplish its primary object of protecting the public. And respondent's evidence that its agents are trained to sell directly and to explain its insurance policies⁸¹ does not remove the illegality of any of its false advertising, which admittedly furnishes leads, or is otherwise delivered by the agent to the prospect.⁸²

Furthermore, the present chairman of the respondent's board of directors, Walter J. Hennessey,⁸³ is the person who, as its general agent in Boston, caused to be circulated the respondent's television advertising, as well as a large part of its interstate newspaper advertising, that published in the Boston Globe and other large Boston dailies. This advertising has been found herein to be false, misleading and deceptive. The record does not give us the benefit of Hennessey's personal views relative to the propriety of further advertising of the same or similar illegal character to that he has already employed. But it does disclose that he is still the respondent's Boston general agent and that he has recently pursued an extensive television advertising program of respondent company's

⁷⁹ See Respondent's Exhibit 5. This attractive and intriguing brochure entitled "Strength for Modern Living," after stating that after a typical family head has procured Craftsman's accident and sickness insurance for his family, emphasizes in capital letters, " * * * THEY CAN LIVE HAPPIER EVER AFTER." Below this, a picture of a man in a wheel chair watching a baseball game, followed by the following text: "With a Craftsman Accident and Sickness Policy tucked away in his valuable papers, Mr. Family Head and family no longer live under a cloud of money worries * * * now can live happier ever after." This emphasized language and a subsequent list of clever questions, even taken in context with the entire brochure, conveys the definite impression that such a policy can never be cancelled and that it will cover losses due to accident and sickness "ever after." This term "ever after" undoubtedly means "forever," "eternally," without limit under any known system of measuring the duration of time.

⁸⁰ Sifton, R., p. 82.

⁸¹ Wetzler, R., pp. 166-170, 173-175, 186; Newton, R., pp. 218-222, 224-226.

⁸² Answer, Affirmative Defenses, Pars. One and Two; Wetzler, R., pp. 190-192, 194-195, 197.

⁸³ Newton, R., p. 14.

insurance on Channel 7, WMAC-TV, in the early evening hours in connection with the Drew Pearson program. This advertising was not strictly commercial, as the company endorsed certain worthy public causes, for which Hennessey had received some apparently well deserved public recognition.⁸⁴ And it certainly can be inferred that the chairman of the corporate board of directors in his other capacity as a successful general agent of the company in selling its insurance actually has little to fear from mere company discipline relating to his advertising.

It is indicated by the evidence, as well as from the extremely pleasant and most cooperative attitude of respondent's officials and counsel which has been apparent throughout the pendency of this entire proceeding, that the respondent is presently set to embark upon a new future program of advertising which it is hoped will not intentionally violate the Federal Trade Commission Act. But the record definitely does not meet the above-quoted and judicially approved criteria which this Commission has established as prerequisite to a proper dismissal of a complaint on the basis of respondent's discontinuance of wrongful practices. This proceeding is in fact one against the corporation and not directly against its present officers by name individually, although they are also bound by the order herein entered.⁸⁵ It also may be noted, in passing, it is judicially well settled that in this false advertising type of proceeding, "The question does not depend upon the purpose of the advertisement nor upon the good or bad faith of the advertiser. The point for consideration here is whether, under the facts and circumstances in connection with the publication of the advertisement, the language in and of itself, without regard to good or bad faith, is calculated to deceive the buying public. * * *"⁸⁶

The advertising practices complained of herein were the product of the thinking and direction of respondent's former president. It does not appear from the record as to whether the former president upon his retirement retained any ownership of any of the corporate stock, but the record does show that on December 31, 1954, he was no longer either an officer or director⁸⁷ and official notice is taken

⁸⁴ Siltan, R., pp. 89-91.

⁸⁵ *F.T.C. v. Standard Education Society* (1937), 302 U.S. 112, 119, rehearing denied, id. p. 661, mandate conformed to, 97 F. 2d 51, cert. denied, 305 U.S. 642.

⁸⁶ *Ford Motor Co. v. F.T.C.* (C.C.A. 6, 1941), 120 F. 2d 175, 181, cert. denied (1941), 314 U.S. 668. See also, *F.T.C. v. Algoma Lumber Co.* (1934), 291 U.S. 67, 79-81; *Gimbel Bros. v. F.T.C.* (C.C.A. 2, 1941), 116 F. 2d 578, 599; and *Fairy Foot Products Co. v. F.T.C.* (C.C.A. 7, 1935), 80 F. 2d 684, 687. The purpose of the statute is protection of the public, not punishment of a wrongdoer. See *F.T.C. v. Klesner* (1929), 280 U.S. 19, 27.

⁸⁷ Commission's Exhibit 27-B.

that the present directors hold financial control.⁸⁸ The present official re-organization took place in October, 1954, nearly two years ago and as yet the respondent has not definitely adopted a new advertising program, despite some steps in that direction. There is also no assurance that other changes may not take place in the future in the respondent's corporate organization and management, with a complete return to the former advertising policy or the adoption of another, which is equally violative of the Federal Trade Commission Act. It is the corporation which must be primarily restrained and prohibited and through such cease and desist order respondent, respondent's officers, agents, representatives and employees will also be restrained.

The foregoing factual considerations, coupled with respondent's continuing objections to the jurisdiction of the Commission over the subject matter of the action and its persisting denials that this proceeding is not to the public interest, clearly impel denial of respondent's motion to dismiss upon the alleged ground that respondent has abandoned the practices complained of and the same is hereby denied.

It appears from the documentary evidence that respondent's present policies are so formulated that most of them require attached riders to effectuate them into comprehensive contracts of insurance covering surgical benefits.⁸⁹ Therefore, any reference to a policy or policies made in the findings of fact herein also includes any surgical or other riders which may be made a part of the policy or policies. The testimony furthermore shows that respondent's plan of selling insurance does not consist of a number of different separate policies to meet the particular needs of a given insured, but that its program is to create for its "policyholders a specific custom-made plan of insurance that will fit his needs" by the use of riders to add or take away certain coverages.⁹⁰ While this system of policy writing may complicate the preparation of respondent's advertising of any particular type of policy, it in no manner eradicates the necessity of respondent's advertisements correctly stating what it actually purports to

⁸⁸ "There are approximately 169 stockholders but financial control is closely held. Directors, at the year end, owned \$142,030 of the outstanding par value capital stock." Best's Insurance Reports, Fire and Casualty, 1955 Ed., p. 301. This company was then capitalized at \$200,000, id., p. 301, which in 1955 was increased to \$400,000, with directors owning \$384,060 of this outstanding stock at the end of 1955. Id., 1956 Ed., p. 308.

⁸⁹ See Commission's Exhibit Nos. 3, 4 and 5, which expressly refer to attached riders. Commission's Exhibit No. 1 includes a surgical schedule and one may be attached to Commission's Exhibit No. 2.

⁹⁰ Wetzler, R., pp. 174, 179, 180, 185, 188-189; and Newton, id., pp. 223-224.

sell by such policy if it chooses to advertise the coverages of such insurance.

The Commission has jurisdiction over the subject matter of this proceeding under the Federal Trade Commission Act as that Act has been amended by, and made applicable to the business of insurance by Public Law 15, 79th Congress. Respondent has extensively objected to and has continuously challenged the jurisdiction of the Commission over the subject matter of this proceeding, contending in substance by its answer and its motion to dismiss, as well as by its counsel's brief and argument, that respondent's business is fully regulated by its domiciliary jurisdiction, the Commonwealth of Massachusetts, and by its Insurance Commissioner under the laws of that Commonwealth, with further supplementary regulation by the respective states in which respondent is licensed to do its insurance business; and that it was not the intent of Congress in enacting Public Law 15 to give jurisdiction to the Federal Trade Commission over respondent's business and its practices.⁹¹

The Commission's jurisdiction over the respondent's false, misleading and deceptive advertising of its policies in interstate commerce, which is the subject matter of this proceeding, is premised and established in this proceeding upon respondent's use of three methods of interstate advertising: (1) Brochures and pamphlets forwarded by the respondent to its licensed agents in interstate commerce, which agents in turn disseminate such brochures and pamphlets to prospective policyholders; (2) newspaper advertisements in metropolitan daily newspapers having wide circulation outside of the State in which they are published; and (3) television broadcasts reaching into numerous States. There is no evidence in the record that respondent itself ever made use of the direct mail approach to obtain policyholders without the intervention of agents. Nor is there any evidence that its agents ever did so in interstate commerce, although it may be inferred that they used the United States mails in local intrastate commerce.

While brief reference has already been made herein to the interstate dissemination of respondent's advertising, it will now be considered in more detail. In the case at bar a series of advertisements was published in the Boston Globe (as well as in other Boston dailies) during the period in controversy, and that in the Boston Globe was particularly published in its afternoon editions of July

⁹¹Answer, Affirmative Defenses, Pars. One to Eight, inclusive; oral argument, R., pp. 121-128; Respondent's Brief in Support of Motion to Dismiss, pp. 5-15, 18.

4 and 20, 1954.⁹² This newspaper had a daily average circulation of between 25,000 and 30,000 copies in States other than Massachusetts, such outside interstate circulation, however, being chiefly into the other New England States.⁹³ These published advertisements in the Boston Globe, which have heretofore been analyzed and compared to the policies offered by respondent and which come within the Commission's condemnations of false, misleading and deceptive advertising, have had such a large and substantial interstate circulation as to warrant the exercise of the Commission's jurisdiction. While published by Walter J. Hennessey, the Boston general agent, they were approved by the respondent.

It is now well settled that national advertising of this character is an integral part of interstate commerce. In the fairly recent case involving the Sherman Anti-Trust Act, *Lorain Journal v. United States*,⁹⁴ it was so held in the following language, significantly and properly referring to the interstate nature of the business of insurance, although that was not the subject matter of the case decided:

* * * There can be little doubt today that the immediate dissemination of news gathered from throughout the nation or the world by agencies specially organized for that purpose is a part of interstate commerce. *Associated Press v. United States*, 326 U.S. 1, 14; *Associated Press v. Labor Board*, 301 U.S. 103. The same is true of national advertising originating throughout the nation and offering products for sale on a national scale. The local dissemination of such news and advertising requires continuous interstate transmission of materials and payments, to say nothing of the interstate commerce involved in the sale and delivery of products sold. The decision in *Blumenstock Bros. v. Curtis Pub. Co.*, 252 U.S. 436, related to the making of contracts for advertising rather than to the preparation and dissemination of advertising. Moreover, the view there stated, that the making of contracts by parties outside of a state for the insertion of advertising material in periodicals of nationwide circulation did not amount to interstate commerce, rested expressly on a line of cases holding "that policies of insurance are not articles of commerce, and that the making of such contracts is a mere incident of commercial intercourse." *Id.*, at 443. See *Paul v. Virginia*, 8 Wall. 168, and *New York Life Ins. Co. v. Deer Lodge County*, 231 U.S. 495. That line of cases no longer stands in the way. *United States v. South-Eastern Underwriters Assn.*, 322 U.S. 533. See also, *North American Co. v. Securities & Exchange Comm'n*, 327 U.S. 686; *Indiana Farmer's Guide Pub. Co. v. Prairie Farmer Pub. Co.*, 293 U.S. 268.

⁹²R., pp. 74-75, Commission's Exhibits 31-36, inclusive, particularly 32 and 34. There is no evidence as to the precise dates of publication or of the amount of interstate circulation of the other Boston newspapers, which are not named. This is also true of the advertisements which appeared in the Springfield and Fitchburg, Massachusetts, newspapers, Commission's Exhibits 20 and 21-A to 21-D. All of such evidence is vague and insufficient whereon to predicate jurisdiction and is therefore disregarded in deciding the Commission's jurisdiction over the subject matter.

⁹³Commission's Exhibits 38-A -B.

⁹⁴342 U.S. 143, 151-152 (1951).

The distribution within Lorain of the news and advertisements transmitted to Lorain in interstate commerce for the sole purpose of immediate and profitable reproduction and distribution to the reading public is an inseparable part of the flow of the interstate commerce involved. See *Binderup v. Pathe Exchange*, 263 U.S. 291, 309; *Stafford v. Wallace*, 258 U.S. 495, 516; *Illinois Central R. Co. v. Louisiana R. Comm'n*, 236 U.S. 157, 163; *Swift & Co. v. United States*, 196 U.S. 375, 398. Unless protected by law, the consuming public is at the mercy of restraints and monopolizations of interstate commerce at whatever points they occur. Without the protection of competition at the outlets of the flow of interstate commerce, the protection of its earlier stages is of little worth. * * *

The respondent company's general agents with express company approval also have engaged in extensive television and radio advertising.⁹⁵ There is no evidence as to the nature of the currently transmitted matter over Station WJAC-TV in Johnstown, Pennsylvania,⁹⁶ but there is a complete documentation in Commission's Exhibits 28A and 29A-D of the television commercials transmitted over the Boston Station WBS-TV, Channel 4, at six o'clock P.M. each Sunday night throughout the period of at least a year shortly prior to the hearing of this proceeding.⁹⁷ This advertising has hereinbefore been analyzed and compared to the policies of respondent it purports to present and found to be within the condemnations of the Commission in several respects. It is clearly shown by the record that Station WBZ-TV, Channel 4, Boston, has a total coverage reaching approximately 1¼ millions of people in the area outside of Massachusetts in the States of New Hampshire, Connecticut, Rhode Island, and Maine, with a somewhat lesser coverage in the higher degrees of reception but still reaching many thousands of listeners in those four States.⁹⁸

It was long ago well settled that "It does not seem open to question that radio transmission and reception among the states are interstate commerce."⁹⁹

And it has very recently been decided that television broadcasting is interstate commerce, that Congress has fully occupied the field of communication by radio and television and regulated such matters and that the States are without power to regulate them.¹⁰⁰ In the *Dumont Laboratories* case the Court of Appeals for the Third Circuit in denying that the Pennsylvania State Board of Censors could

⁹⁵R., pp. 68-72, 77-78.

⁹⁶R., pp. 77-78.

⁹⁷Silton, R., pp. 70-71.

⁹⁸Commission's Exhibit 30.

⁹⁹*U.S. v. American Bond & Mortgage Co.* (D.C., N.D., Ill., 1929), 31 F. 2d 448, 454, Affirmed (C.C.A. 7, 1931), 52 F. 2d 318, cert. denied (1932), 285 U.S. 538.

¹⁰⁰*Allen B. Dumont Laboratories, Inc., et al., v. Carroll, et al.*, 86 F. Supp. 813 (D.C., E.D. Pa., 1949), affirmed, 184 F. 2d 153 (C.A. 1950), cert. denied, 340 U.S. 929.

regulate television broadcasts (which were not limited to that Commonwealth), clearly held to a very strict limitation of state power:

There is no doubt but that television broadcasting is in interstate commerce. This is inherent in its very nature * * *

* * * We think it is clear that Congress has occupied fully the field of television regulation and that that field is no longer open to the States.¹⁰¹

The Supreme Court has even more recently stated in *U.S. v. International Boxing Club, et al.*,¹⁰² with reference to radio, television and motion pictures that "all three media are concededly engaged in interstate commerce."

In enacting Public Law 15, Congress intended that there be regulation at all times. In *American Hospital and Life Insurance Company, supra*, the Commission has clearly delineated its function in controlling advertising in interstate commerce, among other things saliently holding:

The Federal and State laws in this field supplement and reinforce one another in order to provide full protection to the public. * * * It surely could not have been the Congressional intent to create a legal vacuum wherein an insurance company would have been enabled to escape regulation of the interstate aspects of its business in cases in which the Federal and State laws did not conflict.¹⁰³

As already shown, the Commission has long exercised jurisdiction in cases relating to other industries than that of insurance where publications of interstate character and radio broadcasts have been involved. It has been held that evidence concerning radio advertising in a Federal Trade Commission proceeding is clearly admissible,¹⁰⁴ and that a radio station is an instrumentality of commerce.¹⁰⁵ While no decisions have thus far developed specifically applying the same principles of law that govern radio advertising to that transmitted by television, it is clear the same principles must apply in view of the substantial commercial, legal and technical similarities of radio and television businesses and their treatment by Congress in one regulatory Act.¹⁰⁶ The Federal Communications Commission under the Act regulates the radio and television industry as such "in the interest of the listening public,"¹⁰⁷ but it is given no power comparable to, or in any way conflicting with the power

¹⁰¹Id., 184 F. 2d 154, 156.

¹⁰²(1955) 348 U.S. 236, 241, footnote. See also *U.S. v. National Football League* (D.C., E.D., Pa., 1953), 115 F. Supp. 319, 327, wherein it is held, "radio and television clearly are in interstate commerce."

¹⁰³Opinion of the Commission, id., p. 6.

¹⁰⁴*Philip R. Park, Inc. v. F.T.C.* (C.C.A. 1943), 136 F. 2d 428, 430.

¹⁰⁵*N.L.R.B. v. Pacific Gas & Electric Co.* (C.C.A. 1941), 118 F. 2d 780, 786.

¹⁰⁶The Federal Communications Act, 47 U.S.C. § 151 et seq.

¹⁰⁷*National Broadcasting Co. v. U.S.* (1943), 319 U.S. 190, 216.

of the Federal Trade Commission over unfair or deceptive acts in commerce through the use of radio or television advertising. Persons, firms, or corporations who choose to use radio and television advertising which is violative of the Federal Trade Commission Act, come under the Federal Trade Commission's full and plenary jurisdiction to restrain and enjoin them therefrom. Most certainly the radio and television station has not been made a sanctuary by statute or otherwise where any sort of advertisers are given immunity from the jurisdiction of the Federal Trade Commission. Public Law 15 did not grant such a special immunity to the business of insurance.

It is therefore found that this Commission has jurisdiction over the subject matter of this proceeding by reason of the respondent having disseminated to the public in the course of interstate commerce a substantial amount of false, misleading and deceptive advertising of and concerning its health and accident insurance policies, (1) in pamphlet and brochure form transmitted to its agents and distributed by them to the public, (2) by newspaper advertisements, and (3) by television commercial advertising, such latter two methods of advertising directly reaching vast numbers of the public through interstate commerce entirely without the personal intervention of any licensed insurance agent of respondent in any of the States into which such advertisements have been disseminated.

Under the provisions of Section 5(b) of the Act, it is essential that "it shall appear to the Commission * * *" this proceeding "* * *" would be to the interest of the public. * * *" From the foregoing findings, it is manifestly self-evident that this proceeding is to the public interest. The whole record is replete with facts substantially establishing the propriety of protecting the public from the effect of such advertising as has been found herein to be false, misleading and deceptive. Respondent challenges generally the existence of any public interest, urging that:

There is not one shred of proof, not one line of testimony in the entire record to the effect that any member of the public has(sic) or even might be deceived by respondent's advertising material. Why is this? We submit the answer is obvious. No one has been, or could be deceived. . . . (R)espondent's policies are completely explained twice to every prospect by respondent's agents.¹⁰⁸

This is wholly immaterial. This proceeding has been tried solely with reference to the public interest as the Act requires:

¹⁰⁸Respondent's Brief in Support of Motion to Dismiss, p. 16. See also pp. 4, 18.

* * * Section 5 of the Federal Trade Commission Act does not provide private persons with an administrative remedy for private wrongs. . . .

* * * (T)o justify the Commission in filing a complaint under § 5, the purpose must be protection of the public. The protection thereby afforded to private persons is the incident. Public interest may exist, although the practice deemed unfair does not violate any private right.¹⁰⁹

The nature and extent of the respondent's business and the spread of its false, misleading and deceptive advertising in substantial amount in interstate commerce as above found, adequately establish the public interest element herein and the necessity of the Commission's protecting the public therefrom in the future. Public interest in a proceeding of this character, however, is much broader than merely to protect the public from incipient deceit in advertising. The intent and spirit of the Act comprehends that this Commission shall so administer the Act that public reliance may be maintained in the basic fairness and honesty of business so that private enterprise may endure as one of the institutions whereon rests the liberty and progress of a free people. This is particularly true where the industry involved under the complexities of the present day is so interwoven into the national life that it is virtually indispensable. Insurance is undubitably of this character. Here, too, we have a unique composite of public interest, an element of the insurance industry affected with a "vast public interest," which uses, among others, a medium of advertising which itself regulated in the interest of the viewing and "listening public," which business is regulated by this Commission to protect the public from the effects of unfair and deceptive advertising. Public interest is established beyond any question in this proceeding.

It appearing that there is jurisdiction of the person of the respondent, upon the findings of fact hereinbefore made which have been found upon those allegations of the complaint which are admitted by the answer, upon the facts which are based upon consideration of the whole record and supported by the reliable, probative and substantial evidence therein, and matters specially officially noticed, the hearing examiner makes the following conclusions of law:

1. The Federal Trade Commission has jurisdiction over all of the respondent's acts and practices alleged in the complaint to be unlawful.
2. The public interest in the proceeding is clear and substantial.
3. The use by respondent of the statements and representations, found herein to be false and deceptive, with respect to the terms and conditions of its policies of insurance, and its failure to reveal

¹⁰⁹*F.T.C. v. Klesner*, supra, footnote 85, 280 U.S. at pp. 25, 27.

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the exceptions to, and limitations of, the coverage of said policies, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce the purchase of said policies of insurance because of such erroneous and mistaken belief.

4. The aforesaid acts or practices of respondent as above set forth are all to the prejudice and injury of the public and constitute unfair and deceptive acts or practices within the intent and meaning of the Federal Trade Commission Act.

Upon the foregoing findings of fact and conclusions of law, the following order is hereby entered:

ORDER

It is ordered, That respondent, Craftsman Insurance Company, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any accident, health, hospital or surgical insurance policy, including any and all riders attached to and made a part of any such policy, do forthwith cease and desist from representing, directly or by implication:

1. That any such policy may be continued in effect by the insured upon payment of stipulated premiums, indefinitely or for any stated time, unless full disclosure of any other provision or condition of termination contained in the policy is made conspicuously, prominently, and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

2. That no medical examination is required, unless the respondent actually insures the policyholder without regard to his physical condition before or after issuance of the policy; or otherwise representing that the condition of the insured's health at the time of issuance of the policy will not be considered by the respondent in determining its liability thereunder, or that the respondent will not, as a claims practice, require proof of good health of the insured at the time of issuance of the policy.

3. That any such policy provides for indemnification against losses due to sickness or accident, unless a statement of all the conditions, exceptions, restrictions and limitations affecting the indemnification actually provided is set forth conspicuously, prominently, and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

4. That any such policy provides for payment in full or in any specified amount or for payment up to any specified amount for any medical, surgical or hospital service, unless the policy provides that the actual cost to the insured for that service will be paid in all cases up to the amount represented, or unless full disclosure of the schedule of payments for which the policy provides is made conspicuously, prominently, and in sufficiently close conjunction with said representation as will fully relieve it of all capacity to deceive.

5. That any such policy provides for the payment of certain benefits in addition to other benefits when such is not the fact.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the following allegations of Paragraph Three thereof:

“Respondent has sold a substantial number of its said policies to insureds now residing in states other than those in which respondent has been duly licensed, as aforesaid, and respondent mails to such insureds or policyholders notices and receipts relating to the payment of renewal premiums and receives and accepts from such insureds or policyholders premiums mailed to its renewing the coverage purchased for the period of time covered by the premium submitted.”

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

The Commission, by order entered November 23, 1956, having stayed until further notice the date on which the hearing examiner's initial decision, filed August 17, 1956, directed to Craftsman Insurance Company, a corporation, and its officers, agents and employees, would otherwise have become the decision of the Commission; and

The Commission being of the opinion that certain statements and conclusions contained in the initial decision are unnecessary to a disposition of this proceeding and, further, that some of them may be in conflict with and contrary to the import of controlling principles on the question of the Commission's jurisdiction over the interstate activities of insurance companies under Section 5 of the Federal Trade Commission Act, as enunciated in prior decisions of this Commission;

The Commission has concluded that said initial decision should be modified in certain respects and, as so modified, adopted as the decision of the Commission:

It is ordered, That the initial decision be, and it hereby is, modified by deleting therefrom the following:

(a) On *Page 9*, line 2 of the second full paragraph, the words “as its alter ego.”

(b) *Pages 25-27* commencing with the words "As to the first type" on page 25, and continuing through the paragraph ending at the top of page 27 concluding with the words "regulated by State law," together with the appended footnote references numbered 92-94, inclusive.

(c) *Pages 30-32* commencing with the words "Neither the Massachusetts Commissioner" on page 30 and continuing through the paragraph at the top of page 32 concluding with the words "considerations why such a law will never be enacted," together with appended footnote references numbered 106-110, inclusive.

(NB The above page references are to the original typewritten copy of the initial decision in the formal public record herein filed August 17, 1956.)

It is further ordered, That the initial decision of the hearing examiner, as modified herein, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondent, Craftsman Insurance Company, shall within sixty (60) days after service upon it of this order file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist contained in the initial decision as modified.

Chairman Gwynne dissenting and Commissioner Tait not participating.

Decision

IN THE MATTER OF
HIRAM B. HUNDLEY TRADING AS BEN HUNDLEY

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

Docket 6626. Complaint, Sept. 11, 1956—Decision, Jan. 16, 1957

Consent order requiring a seller of new and used automobile and truck tires in Washington, D.C., to cease using bait advertising and other false claims in newspapers as to prices, values, and savings, and false representations that tires actually no longer manufactured were "Factory Fresh", of "1955" or "1956" stock, and that certain others were "Factory Reconditioned".

Mr. Michael J. Vitale for the Commission.

Mr. Frederick Stohlman and *Mr. George H. Beuchert, Jr.*, of Washington, D.C., for respondent.

INITIAL DECISION BY JOSEPH CALLAWAY, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on September 11, 1956, charging him with violation of the Federal Trade Commission Act as set forth in said complaint. After issuance and service of the complaint, respondent and counsel supporting the complaint, on November 30, 1956, entered into an agreement containing consent order to cease and desist from the practices complained of, which agreement disposes of all the issues in this proceeding without hearing. This agreement has been duly approved by the Assistant Director and Director of the Bureau of Litigation and has been submitted to the undersigned, heretofore designated to act as hearing examiner herein, for his consideration in accordance with Rule 3.25 of the Rules of Practice of the Commission.

Respondent Hiram B. Hundley, an individual, trading and doing business as Ben Hundley, in the aforesaid agreement has admitted all the jurisdictional facts alleged in the complaint and has agreed that the record may be taken as if findings of the jurisdictional facts had been duly made in accordance with such allegations. Said agreement provides further that respondent waives all further procedural steps before the hearing examiner or the Commission, including the making of findings of fact or conclusions of law and the right to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. It has also been agreed that the record herein shall consist solely of the com-