

Decision

IN THE MATTER OF
GARY PHARMACAL COMPANY ET AL.CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF THE FEDERAL TRADE COMMISSION ACT

Docket 6655. Complaint, Oct. 17, 1956—Decision, Oct. 18, 1957

Consent order requiring a seller in Chicago to cease representing falsely in advertising that its drug preparation "Dry-Tabs" was a new discovery that would correct the bed-wetting habit in all cases, and to reveal conspicuously that the preparation was of no value except in cases of functional bed-wetting not involving organic defects or diseases and should not be used by children under six except on a physician's advice.

Mr. William A. Somers for the Commission.

Frank E. & Arthur Gettleman, of Chicago, Ill., by *Mr. Frank E. Gettleman*, for respondent Gary Pharmacal Co.

INITIAL DECISION BY WILLIAM L. PACK, HEARING EXAMINER

The complaint in this matter charges the respondents with the dissemination of false advertisements in connection with a medicinal preparation sold by them, the preparation being for use in the prevention or correction of enuresis or bed-wetting. An agreement has now been entered into by counsel supporting the complaint, and the corporate respondent Gary Pharmacal Company which provides, among other things, that said respondent admits all of the jurisdictional allegations in the complaint; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and agreement; that the inclusion of findings of fact and conclusions of law in the decision disposing of this matter is waived, together with any further procedural steps before the hearing examiner and the Commission; that the order hereinafter set forth may be entered in disposition of the proceeding, such order to have the same force and effect as if entered after a full hearing, said respondent specifically waiving any and all rights to challenge or contest the validity of such order; that the order may be altered, modified or set aside in the manner provided for other orders of the Commission; that the complaint may be used in construing the terms of the order; and that the agreement is for settlement purposes only and does not constitute an admission by said respondent that it has violated the law as alleged in the complaint.

The proposed order covers all of the issues raised in the complaint except that as to whether respondent's advertisements should con-

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tain an affirmative statement to the effect that most cases of bed-wetting occur in children under six years of age. Counsel supporting the complaint is of the view that this is a matter of such common knowledge that it is unnecessary that such a statement appear in the advertisements. The hearing examiner concurs in this view.

The individual respondent in the proceeding, Saul C. Korkin, has died since the issuance of the complaint, and the proposed order provides for the dismissal of the complaint as to him.

The hearing examiner being of the opinion that the agreement and proposed order provide an adequate basis for appropriate disposition of the proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued:

1. Respondent Gary Pharmacal Company is a corporation existing and doing business under and by virtue of the laws of the State of Illinois, with its office and principal place of business located at 7460 Exchange Avenue, Chicago, Illinois.

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

ORDER

It is ordered, That respondent Gary Pharmacal 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 or distribution of "Dry-Tabs," or any other preparation of substantially similar composition or possessing substantially similar properties, do forthwith cease and desist from:

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

- (a) That "Dry-Tabs" will be effective in stopping bed-wetting or correcting the bed-wetting habit in all cases.

- (b) That "Dry-Tabs" is a new discovery for treatment of the bed-wetting habit.

2. Disseminating or causing to be disseminated any advertisement, by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to clearly and conspicuously reveal that said preparation is of no value in stopping bed-wetting or in correcting the bed-wetting habit, except in cases of functional bed-wetting not involving organic defects or diseases; and that the preparation should not be used by children less than six years of age except upon the advice of a physician.

3. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of respondent's preparation, or similar products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in Paragraph 1 of this order, or which fails to comply with the affirmative requirements set forth in Paragraph 2 hereof.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Saul C. Korkin.

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 did, on the 18th day of October, 1957, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent Gary Pharmacal Company, a corporation, 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.

IN THE MATTER OF
NULIFE PRODUCTS COMPANY ET AL.

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

Docket 6809. Complaint, May 28, 1957—Decision, Oct. 18, 1957

Consent order requiring mail order sellers in Philadelphia to cease representing falsely in advertising in newspapers, circulars, etc., that use of their eyeglasses would correct the defects in vision in all persons over 40 to the extent that they would be able to read fine print "with ease never before thought possible."

At respondents' request, the order to cease and desist was, on April 11, 1958, modified to exclude from operation thereof respondents' advertisements for their "Clip-on Magnifiers" to be worn over regulation prescription lenses.

Mr. Frederick McManus for the Commission.

Mr. Milton A. Bass, of New York, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding charges that the respondents have violated the provisions of the Federal Trade Commission Act by the use of false and misleading newspaper advertisements and other media in connection with the sale of eyeglasses.

After issuance and service of the complaint, the respondents, their counsel, and counsel supporting the complaint entered into an agreement for a consent order. The order disposes of the matters complained about. The agreement has been approved by the Director of the Bureau of Litigation.

The pertinent provisions of said agreement are as follows: Respondents admit all jurisdictional facts; the complaint may be used in construing the terms of the order; the order shall have the same force and effect as if entered after a full hearing and the said agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusion of law; respondents waive further procedural steps before the hearing examiner and the Commission, and the order may be altered, modified, or set aside in the manner provided by statute for other orders; respondents waive any right to challenge or contest the validity of the order entered in accordance with the agreement; and the signing of said agreement is for settlement purposes only and does not constitute