

IN THE MATTER OF  
POSTAL LIFE AND CASUALTY INSURANCE COMPANY

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

*Docket 6276. Complaint, Dec. 28, 1954—Order, Oct. 31, 1957*

Order dismissing for failure of proof complaint charging false advertising of accident and health insurance policies.

*Mr. John W. Brookfield* and *Mr. Donald K. King* for the Commission.

*Mr. Kenneth Teasdale*, of St. Louis, Mo.; *Mr. Harold Knight*, of Kansas City, Mo.; and *Mr. A. Alvis Layne*, of Washington, D.C., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges that respondent has disseminated false, misleading and deceptive advertisements relating to its accident and health insurance policies and, by so doing, has engaged in unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act, as that Act 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), hereinafter referred to as the McCarran Act.

Respondent's answer admits the allegations of the complaint as to its existence and business, but denies Federal Trade Commission jurisdiction and the allegations as to violation of the Federal Trade Commission Act. The answer states as an affirmative defense that the respondent has engaged in a long course of cooperative dealing with the Federal Trade Commission in connection with and under trade practice rules promulgated by the Commission, during which the Commission's staff found respondent's advertising material, including the advertising circulars which are at issue in this proceeding, to be in accord with the trade practice rules and not objectionable or subject to criticism.

In connection with its answer respondent moved that the complaint be dismissed on the ground that the Federal Trade Commission Act has no application to the business of respondent, and, because the Commission's pleading "does not state a complaint upon which relief can or should be granted as a matter of law, [or], in the alternative, that the complaint be dismissed and the matter referred to the Bureau of Consultation of the Commission for han-

dling and disposition, under the cooperative procedures of that Bureau." This motion was denied by the Hearing Examiner. A motion to make the complaint more definite and certain was likewise denied following a statement by counsel supporting the complaint "that only those advertisements from which the quotations set out in PARAGRAPH FIVE of the complaint were taken would be relied on for proof of the Commission's case."

Thereafter hearings were held at which evidence in support of and in opposition to the allegations of the complaint was presented, duly recorded and later filed in the office of the Commission. Proposed findings of fact and conclusions of law, with supporting memoranda of law, have been submitted by counsel.

Upon the entire record, the following findings of fact and conclusions of law are made:

1. Respondent, Postal Life and Casualty Insurance Company, is a corporation organized July 29, 1927, 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 612 West 47th Street, Kansas City, Missouri.

2. Respondent is now and for more than two years preceding the filing of the complaint had been engaged in the accident and health insurance business in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into accident and health insurance contracts with insureds located in various states of the United States other than the State of Missouri. Respondent's business in commerce has been and is substantial; in 1953 its total accident and health premiums for insurance written or renewed during the year, exclusive of premiums from within the State of Missouri, amounted to approximately \$984,610, and in 1954 to approximately \$1,008,000. Some proportion of this represented business carried on with customers in each of the several states and in Alaska, Hawaii and the District of Columbia. A negligible amount of business receipts came from Puerto Rico, Canada, Mexico, the Philippine Islands, and other foreign countries. Practically all the premiums came from holders of individual policies—in 1953 respondent's receipts from group accident and health policies amounted to approximately one-half of one percent of its total premium receipts; in 1954, the proportion was approximately 1.26%.

3. Respondent is licensed to engage in insurance business in Missouri and in seven other states—Colorado, Illinois, Iowa, Kansas, Nebraska, Texas and Virginia. Of its total premium receipts from states and areas other than Missouri, the premiums from the states in which respondent is licensed amounted approximately, in 1953,

to 28.9%, and in 1954, to 30.2%. Respondent's business in states other than those in which it is licensed is therefore substantial.

4. In determining jurisdiction this distinction is not vital in view of the Commission's decision in the matter of *The American Hospital and Life Insurance Company*, Docket No. 6237, nor is it necessary to examine the laws of the various states as they relate to false and deceptive advertising practices such as those which constitute the aggregate of the charges in the complaint in this proceeding. The Commission, in deciding that case, said:

Under the Federal Trade Commission Act, which the McCarran-Ferguson Act made applicable to the business of insurance, there must remain an irreducible area of Commission jurisdiction over the interstate activities of insurance companies which cannot be reached by State law and as to which the limitation "to the extent that such business is not regulated by State law" is inoperative. \* \* \* Our proceeding to abate deceptive practices by such (insurance) companies does not impinge on those<sup>1</sup> State functions \* \* \*. By executing its statutory mandate to prevent deceptive practices in the interstate business of insurance, the Commission in no wise usurps State laws prohibiting false advertising. The Federal Trade Commission Act and the State laws are both designed to suppress deception in advertising. The Commission's action in the instant matter aids the States in their own local procedures to protect their citizenry from such excesses.

The Commission's assertion of jurisdiction in the *American Hospital* case and in the other insurance cases<sup>2</sup> that have been before it is still controlling precedent in this proceeding, and upon that precedent it must be found that the Federal Trade Commission has jurisdiction of the respondent and over the issues herein raised.

5. The foregoing conclusion is applicable to all phases of this proceeding, even though the complaint, in its allegations, seems to envision three areas in which different conclusions might be reached as to jurisdiction. There is, first of all, the solicitation by mail of insurance sales in states other than those in which respondent is licensed to do business; in the second place there is the area of operation in states in which respondent is licensed, in which, by inference at least, the complaint admits that respondent's insurance activities are regulated, since all such states have applicable regulatory statutes; thirdly, there is that business which was originally transacted with insureds living in states in which respondent is licensed, who later, in substantial numbers, moved to states in which respondent is not licensed, but who continued doing business with

<sup>1</sup> Referring to the States' power to revoke charters of insurance corporations organized under their laws, to regulate, tax, and fix rates for insurance companies doing business within their borders.

<sup>2</sup> In the Matter of *National Casualty Company*, a corporation, Docket 6311; in the Matter of *Federal Life & Casualty Company*, a corporation, Docket 6312, order granting appeal from Hearing Examiner's order limiting scope of proceeding.

respondent in the renewal and servicing of such policies. The amount of business falling within this third category was infinitesimal in comparison with respondent's total business, and may be disregarded as *de minimis*. The business falling into the second category is specifically within the finding in the *American Hospital* case, supra, and in *National Casualty Company*, Docket 6311; while that in the first category is clearly embraced by the broad implications of those decisions, and is specifically made the subject of conclusive findings of jurisdiction in several initial decisions in cases similar to the instant proceeding.<sup>3</sup>

6. In the course of its business during the years 1953 and 1954, respondent sold the following policies:

(1) A Twenty-Fifth Anniversary Accident Policy bearing the identification G-68-5-52;

(2) A Series E Accident and Sickness Policy bearing identification ES-1-7-53;

(3) An Individual Hospital Expense Policy identified as IH-1-7-53; and

(4) A Family Group Hospital Expense Policy covering losses resulting from accidental bodily injury or sickness, identified as FH-1-7-53.

7. Policy ES-1-7-53 is no further involved in this case for two reasons: the extent of respondent's business during 1953 and 1954 in connection with this policy was inconsequential, and no advertising material relating to it or its coverage is contained in the record or shown to have been disseminated. Policy IH-1-7-53 may be disregarded herein because the complaint contains no charge that any of its provisions were misrepresented in any of respondent's advertising.

8. Policy FH-1-7-53, respondent claims, should be excluded from consideration because it was sold by agents only in states in which respondent was licensed, and, during the years 1953 and 1954, only eight purchasers of that policy moved to states in which respondent was not licensed, and thereafter only one semi-annual premium of \$11.40 was received applicable to such a policy. Under respondent's interpretation of the theory of jurisdiction upon which the complaint was based, this claim would be valid, but since that interpretation is rejected, the claim is likewise rejected.

9. The record contains only one piece of advertising relating to the FH-1-7-53 policy, which, like other of respondent's policies,

<sup>3</sup> See *American Life and Accident Insurance Company*, Docket 6238; *Automobile Owners Safety Insurance Company*, Docket 6239; *Travelers Health Association*, Docket 6252; *Educators Mutual Insurance Company*, Docket 6308. Conclusion of Law No. 5; and *North American Accident Insurance Company*, Docket 6456.

is renewable at the option of the company only. This is a four-page folder, the first two pages of which contain descriptive material relating to the policy. The third page is an application form, and the last page is a blank form for home-office use. This folder was not circulated generally to the public, but was distributed by respondent to its agents with instructions that it be used, along with a sample policy with which they were also supplied, in explaining to prospective purchasers the provisions of the policy. After taking an application, the agent, according to his instructions, was to tear the sheet containing pages 1 and 2 from the application part of the folder, and give it to the policy-purchaser, so that he could later assure himself that the delivered policy was as represented. At the bottom of the first column on page 2 of this folder appears the following:

ARE BENEFITS REDUCED WHEN YOU REACH 60 OR 65? NO! Adult benefits never reduce after the policy is issued.

This is the only bit of advertising relied upon to support the charge that respondent has disseminated false, misleading and deceptive advertising relating to this policy. It is alleged that the foregoing language constitutes a representation that respondent's said policy may be continued to age 65 or indefinitely at the option of the insured. The bottom half of the second column on page 2 of the folder contains a tabulation showing benefits and premium rates for various types of coverage provided by the FH-1-7-53 policy.

10. Read in context, the statement relied upon means only what it says: that benefits never diminish after the policy is once issued. Taken literally or with reasonable inference, the statement cannot be interpreted as applicable to policy termination, whether by action of the insured or by action of the insurer. The concept of termination is neither expressed nor implicit in the language, which is no broader in scope, nor more susceptible of misinterpretation, than the language contained in respondent's advertising in the matter of *The American Hospital and Life Insurance Company*, Docket 6237, as to which, on review, the Commission said:

The Commission does not construe these statements as having the meaning ascribed to them. Said statements can be reasonably read to mean only that the policies contain no provisions terminating or reducing benefits on account of increasing age \* \* \*; and the evidence is that the statements as so construed are both true. On this phase of the case the allegations of the complaint have not been sustained.

Accordingly, it is found that respondent's statement above quoted does not have the meaning ascribed to it in the complaint. It is

further found that the statement is true, there being no evidence in this case that benefits under respondent's policy are ever reduced because of the increasing age of the insured. On this phase of this proceeding, the allegations of the complaint as they relate to the advertising of policy FH-1-7-53 have not been sustained.

11. The G-68-5-52 policy was sold by mail throughout the United States. Mailing lists were purchased for use by respondent under an arrangement whereby the respondent was entitled to use each name but one time. Therefore, except by pure accident, no prospective customer ever received more than one of the four pieces of advertising literature which the record shows were used to promote the sale of this policy. Three of these were two-page form letters; the other was a four-page combined form letter and advertising circular. The impression made upon a prospect would result from his having received and read a single one of these documents, not from having received or considered them as a cumulative series, as the complaint alleges. All of these documents and the policy to which they relate had been submitted to the Commission and discussed with the Commission's staff in 1953, at which time respondent was advised that all were in compliance with the trade practice rules then in effect. A previous examination of this same advertising material, or material containing identical statements, and the same or similar policies had been made by a member of the Commission's staff in 1951, and the same conclusion stated to respondent.

12. With respect to the G-68-5-52 policy, the complaint contains two charges. The first relates to renewability and is the same charge as that made with respect to policy FH-1-7-53, to wit, that respondent has represented that the policy "may be continued to age 65 or indefinitely at the option of the insured," and that this is false, misleading and deceptive because the policy is renewable at the option of respondent only, and that the use of such false and misleading representations "has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public \* \* \* and to induce said portion of the purchasing public to purchase insurance coverage from the respondent \* \* \*." The provision that the policy is renewable at the option of the respondent only is clearly and conspicuously displayed on the front page of the policy in 18-point bold-face type. If respondent's advertising statements can be interpreted to mean that the policy "may be continued to age 65 or indefinitely at the option of the insured," then respondent is guilty, as charged, of having disseminated deceptive and misleading advertising in violation of the Federal Trade Commission Act.

13. Excerpts from the advertising alleged to embody this representation are set forth in the complaint, Paragraph 5 1.(a), as follows:

THIS POSTAL POLICY COVERS MANY DANGEROUS ACCIDENTS

For Men, Women and Children—Ages 7 to 65 Years

You receive insurance protection under this improved low cost plan regardless of your age between 7 and 65 \* \* \* and benefits are PAID DIRECT TO YOU or to your beneficiary.

You are protected if you are killed or injured (wholly disabled and confined and under medical attention) from any of these common accidents that happen everyday!

This extract is from the middle of the inside double page of the four-page letter-circular. It appears in no other advertising material relating to this policy, and is the sole statement upon which this charge is founded. It differs from the statement quoted and discussed in paragraphs 9 and 10, above, referring to the FH-1-7-53 policy, but, like that statement, embodies no concept referable to policy continuation or termination. In the *National Casualty Company* proceeding, Docket 6311, the Hearing Examiner and the Commission found misrepresentation as to policy duration based on the over-all impression created by numerous advertising statements, including phrases such as "Life indemnity accident coverage," "Security plan with lifetime benefits," "Lifetime accident benefits," "I understand this peace of mind and security will be mine from the first day—even for life," and other phrases of similar import contained in many of the forty-five separate pieces of advertising material introduced into evidence in that case, twenty-eight of which were still being used at the time of the issuance of the complaint therein. The voluminous advertising propaganda inducing the cumulative effect which results from the continued repetition of phrases of similar import does not exist in this proceeding.

14. If the representation charged is read into the advertising language used by respondent in this case, it must be by inference and not by accepting the plain meaning of the language used. One witness, a man with several years' experience in the Insurance Department of the State of Missouri, having, during the course of his duties in this department, discussed insurance problems and insurance advertising with many members of the public, and therefore being familiar with their interpretation of language used in such advertising, stated that it was his opinion that persons who read the statements above quoted would take them to mean "that anybody between the ages of 7 years and 65 years could purchase the policy being advertised." There is no evidence that the statements

would be interpreted otherwise. Accordingly, it is found that respondent's statements do not have the meaning ascribed to them, but can be reasonably read to mean only that the policies contain no provisions terminating or reducing benefits on account of increasing age, and that applicants for such policies must be within the age limits specified. That being the natural meaning of the language in the context in which it is found, and respondent's G-68-5-52 policy being available to purchasers between the ages stated, the conclusion as to this charge is the same as that reached with respect to the similar charge relating to policy FH-1-7-53, and for the same reasons, that the allegations of the complaint as they relate to this charge have not been sustained.

15. Actual deception need not be shown in a proceeding under Section 5 of the Federal Trade Commission Act. The Commission, through the exercise of its "expertise," may find that an advertisement has a tendency or capacity to deceive, and may issue an appropriate order to stop such deception. It has been said that "The 'expertise' of a commission usefully serves it in evaluating the evidence, but that expertise can not supply evidence and can not, without findings made upon the critical issues before it, guide a commission to a rational and lawful decision"; and that the ultimate decision reached by the Commission must follow as a matter of law from the facts found as its basis, and such facts must have substantial support in the evidence.<sup>4</sup> Two courts have indicated that "the exercise of discretion, the making of judgments, and the issuance of sanctions, on basis of administrative expertise are precisely the matters which Congress intended should be under and not exempt from the Administrative Procedure Act," and that there must be basic findings of facts.<sup>5</sup>

16. If a cosmetic manufacturer states that its product has rejuvenescent qualities, the conclusion is justified that the statement is deceptive, since restoration of youth to the old has never been accomplished. In such a case, the basic fact of representation is established. If the respondent, in the instant case, had printed in its advertising the representations with which it is charged in the complaint, we might, upon examination of the policy to which the advertising refers, readily conclude, through exercise of the Commission's expertise, that the capacity and tendency to deceive are inherent in the advertisements. The respondent, however, did not print the representations as charged, but used other language which

<sup>4</sup> *Capital Transit Co. v. Public Utilities Com'n.*, C.A.D.C., 12/10/53. 213 F. 2d 176.

<sup>5</sup> *Amarillo-Borger Express v. U.S.*, 139 F. Supp. 411 @ 418; D.C.N.D. of Texas, Dallas Div., 1/24/56; *Automobile Sales Co., Inc. v. Bowles, Adm'r.*, 58 F. Supp. 469, D.C.N.D. Ohio, E.D., 4/27/44.

the complaint alleges imports the same thing. The respondent contends that the language it used does not constitute the alleged representations. It produced a witness, who, as an expert in insurance advertising and its meaning to the public, testified in support of respondent's contention. The record contains no evidence on this issue contradicting that testimony. Thus, to support a finding that the respondent made the representations charged, all the evidence of record relative to this issue would have to be disregarded, and a conclusion as to the meaning of the language would have to be reached, based wholly on implication, inference and Commission expertise. The issuance of a cease-and-desist order in this proceeding with respect to this charge cannot be justified except by reliance upon the doctrine of expertise to support a factual finding, contrary to the evidence of record, that respondent's advertising language constitutes the alleged representations. Such a substitution of the doctrine of expertise for uncontradicted evidence is not warranted.

17. The second charge of the complaint relating to policy G-68-5-52 is that respondent has represented "that *adequate* benefits are payable for losses resulting from accidents of the type covered by the policy," whereas "in truth and in fact \* \* \* respondent's policy G-68-5-52 \* \* \* does not provide *broad and adequate* insurance for the type of accidents named in the policies" (underscoring supplied). Assuming, *arguendo*, that respondent has made the representation alleged, yet it is a fact that "broad" and "adequate" are not synonyms; hence proof that respondent's policies do not provide "broad and adequate" coverage would not necessarily establish that such policies do not provide "adequate benefits \* \* for losses resulting from accidents of the type covered by the policy." A basic rule of pleading and practice is that proof must conform to the charge. Passing over this deviation as being inadvertent, and interpreting the charge to be that respondent's policies do not provide adequate insurance, as allegedly represented, the facts will be examined.

18. This second representation alleged to be false is based upon the following advertising statements used by respondent and quoted in the complaint:

- FIVE. 3. (a) One serious accident could wipe out your life savings or put you in debt. Be *sure* \* \* \* have adequate insurance when accidents happen.
- (b) The policy covers many dangerous accidents that happen everyday!
- (c) It pays you \$100.00 A MONTH while under medical attention for as long as TWELVE MONTHS if you are wholly disabled and confined from *any accident* covered by this policy.

The foregoing statements are completely out of context. They do not appear adjacent or contiguous to each other anywhere in any of respondent's advertising material. The expression "One serious accident could wipe out your life savings or put you in debt. Be *sure* \* \* \* have adequate insurance when accidents happen" (3.(a) above) appears only once in respondent's advertising. It is in a two-page letter of solicitation identified in the record as Commission's Exhibit No. 13. This also is the only bit of advertising containing the three excerpts, (a), (b) and (c) above, even disjunctively. The letter is on respondent's letterhead; in the upper right corner, just below the printed letterhead, in the similitude of an attached, hand-written note, appears the following:

Special Note—

30 days

Accident Insurance for only 25¢—Now, be protected *while* you examine the actual policy on a money back guaranteed Special ½ price Introductory Offer!

J.W.W.

The letter is addressed, "Dear Friend: "; following this is a sentence in red type, "Here Is Wonderful Good News." Then come three short paragraphs in black type, of which 3.(a) above is the third; following this is a centered heading in red, "Special Introductory Offer," under which there are two paragraphs, the second one in red, the last sentence of which reads: "I honestly believe you will like it so well, you will want to keep it in force." Then comes another centered statement, this time in black, "Here's why:," followed, on page 1, continuing over to page 2 of the letter, by a paragraph containing, in variant form, the quotation 3.(c) above. Following this is a short paragraph, then, as a sort of sub-heading, in red, the statement, 3.(b) above, "The policy covers many dangerous accidents that happen every day." Immediately thereafter, in black, are the following two paragraphs, not quoted in the complaint:

It pays \$2,000.00 if you are killed—or the \$100.00 a month disability benefit if you are injured—in accidents to a *railroad train, street car, elevated or subway train, public or school bus, licensed taxicab or licensed commercial airplane* on which you are a passenger.

It pays \$1,000.00 if you are killed—or the \$100.00 a month disability benefit if you are injured—in accidents to a *motor car or truck* in which you are riding or driving \* \* \* by *being struck* by a moving vehicle on any public street or highway \* \* \* or by accidents to a *tractor or tractor-drawn vehicle* on which you are riding or driving or to *power-propelled farm implement* on which you are riding or driving \* \* \* and other specified types of accidents.

After this are five other paragraphs, the first and third in red the others in black; then the printed facsimile signature of J.W.

Walker, Vice President. The two paragraphs last quoted also appear in every letter used to promote the sale of the G-68-5-52 policy. In addition, the four-page letter-brochure lists four classes and sixteen specific kinds of accidents that are covered by this policy.

19. The expression "Be sure \* \* \* have adequate insurance when accidents happen" must be interpreted in this context. It is not a statement that respondent's G-68-5-52 policy is adequate for everyone, but rather a suggestion or urging that each prospective purchaser examine his own circumstances, his own needs, then look at respondent's offering at 25¢ for thirty days, \$3.60 for six months, or \$6.95 by the year, and determine whether that would be adequate for his needs for the type of coverage provided. Asked by counsel supporting the complaint, "What insurance would the average member of the public need to have \* \* \* adequate insurance?", the witness hereinbefore mentioned, from the Department of Insurance of the State of Missouri, replied:

I think that is a question impossible to answer, sir. I could not plan an insurance program for anybody without knowing all of the details of his particular situation, including his family situation, his income situation, his occupation situation.

Prior to this answer, in response to another question put by counsel supporting the complaint as to the meaning of the phrase here under discussion as used in respondent's solicitation letter, he said:

I think that means, have the insurance you need for your protection. You know your needs, get the insurance you need to fill them in the event of incapacity from accident.

There is no evidence in the record to contradict this witness' interpretation of this advertising, and it is the obvious and reasonable meaning of the language as used.

20. "Adequate" is a relative term. What is adequate for one person may not be adequate for another. It is such a term as "amazing distance" or "perfect lubrication," under consideration in the *Kidder* case,<sup>6</sup> or "easy" as discussed in the recent *Washington Mushroom* case.<sup>7</sup> In those cases it is pointed out that such terms, being relative, "are largely a matter of personal opinion," and in the absence of direct evidence to establish that they have been used deceptively, do not support a specific inhibition against their use,—this in cases where the words, without question, were used to describe respondent's products or operations. In this proceeding a finding that the term "adequate" is used descriptively of respondent's policy would

<sup>6</sup> *Kidder Oil Co. v. F.T.C.* (C.A. 7, 1941), 117 F. 2d 892.

<sup>7</sup> In the Matter of *Washington Mushroom Industries, Inc., et al.*, Docket 6273, issued by the Commission October 24, 1956.

be reading into language an unwarranted implication, and would be founded upon an unjustified inference and contrary to positive evidence of record. Clearly, under the facts and circumstances disclosed in this proceeding, this charge of the complaint has not been sustained and should be dismissed.

21. Respondent contends that, in any event, its record of cooperation with the Commission, and its willingness, in the future, to conform in all respects to the law as interpreted by the Commission or its staff would justify a dismissal of this proceeding without prejudice. In view of the findings hereinabove made, this contention of the respondent need not be discussed further.

22. Upon consideration of all the facts of record, the conclusion is reached, as hereinabove indicated, that the charges of the complaint have not been established by reliable, substantial, probative evidence, and that the complaint should be dismissed. Accordingly,

*It is ordered*, That the Complaint herein be, and the same hereby is, dismissed.

#### OPINION OF THE COMMISSION

By KERN, Commissioner:

Respondent, Postal Life and Casualty Insurance Company, is charged in the complaint in this proceeding with having disseminated false, misleading and deceptive representations in connection with the advertising and sale of certain of its accident and health insurance policies. Respondent is licensed by Missouri and seven other states, where it has agents, to conduct an insurance business. It operates a mail-order insurance business in each of the several other states and in Alaska, Hawaii, and the District of Columbia. About 70% of the volume of its business is conducted by mail outside the State of Missouri and the seven other states where respondent is licensed.

Two groups of statements were attacked in the complaint. The first category allegedly misrepresented the renewable features of respondent's policies. The second group, it is charged, misleadingly presented the extent of coverage, or adequacy of benefits, secured through respondent's policies.

As to the first group of statements wherein the complaint charges misrepresentation as to renewability, the following are typical statements which are the subject of this allegation:

(a) ARE BENEFITS REDUCED WHEN YOU REACH 60 OR 65? NO! Adult benefits never reduce after the policy is issued.

(b) For men, women and children—Ages 7 to 65 Years. You receive insurance protection under this improved low-cost plan regardless of your age between 7 and 65 \* \* \*.

## Opinion

54 F.T.C.

The complaint ascribes to the quoted statements the meaning that respondent's policies can be continued to age 65 or indefinitely at the option of the insured and alleges such representations to be false and misleading since respondent's policies are renewable only at the option of respondent company.

The hearing examiner found as to (a) above that the statement read in context means only that benefits never diminish after the policy is once issued and stated that the concept of termination by either the insured or the insurer is neither expressed in, nor inferable from, the statement.

As to statement (b) quoted above, the hearing examiner, after noting that it differed somewhat from statement (a), concluded that if the representation charged is read into the advertising language, it must be by inference and not by accepting the plain meaning of the language used. He found accordingly that respondent's statements do not have the meaning ascribed to them, but can be reasonably read to mean only that the policies contain no provisions terminating or reducing benefits on account of increasing age, and that applicants for such policies must be within the age limits specified.

In other insurance cases which have been before the Commission wherein representations as to duration of coverage have been prohibited, the contexture in which the representations appeared and the circumstances surrounding them were entirely different than we find here. In the instant case but one circular containing the questioned statement was sent to a prospect. In other cases mentioned there was a definite series of representations, a pattern, or continuity, and reiteration of the representations in many subtle and repetitive forms. In fact, in one case the record showed that as many as thirty letters might be sent to one individual.<sup>1</sup> Moreover, in the cases mentioned the representation was tied in with others which emphasized, for example, that security is afforded for older people, together with certainty of cash assistance when needed most. Here there is no voluminous advertising of a definitely deceptive pattern producing the "setting" present in other similar proceedings.

No persuasive argument to the contrary having been advanced by counsel supporting the complaint, the Commission is of the opinion that the hearing examiner correctly concluded that the allegations of the complaint as they relate to the charge as to "renewability" have not been sustained.

<sup>1</sup> *Travelers Health Association*, Docket No. 6252, decided December 20, 1956 (pending on petition for review, C.A. 8). See also *North American Accident Insurance Company*, Docket No. 6456, decided February 20, 1957.

The second group of statements alleged in the complaint to be misleading are quoted therein as follows:

- Five. 3.(a) One serious accident could wipe out your life savings or put you in debt. *Be sure . . .* have adequate insurance when accidents happen.
- (b) The policy covers many dangerous accidents that happen every day.
- (c) It pays you \$100.00 A MONTH while under medical attention for as long as TWELVE MONTHS if you are wholly disabled and confined from *any accident* covered by this policy.

The complaint alleges that the policy involved does not provide "broad and adequate" insurance for the type of accidents named in the policies and asserts that under the terms of the policies no indemnification is provided for loss of life, vision or dismemberment unless such loss occurs within thirty days of the date of the accident; no indemnification for total disability unless such disability exists from the date of the accident or is preceded by total disability, and no indemnification for hospital expenses unless the injury involved is one which entitles the insured to total disability or elective benefits (loss of limb or vision) and no indemnity unless the insured is continually under the care of a physician.

The representations in question were noted by the hearing examiner to have been lifted completely out of context. After reviewing the statements in their whole setting and interpreting the statements in that context, the hearing examiner characterizes the statement as to "adequacy" not to be a representation that the policy involved is adequate for everyone, but rather a suggestion, or admonition, that each prospective purchaser should examine his own circumstances and then determine whether the various programs offered by respondent would be adequate for his needs. Indeed, there is uncontradicted testimony of record to the effect that "adequate insurance" means simply the insurance one needs for his own protection, having in mind his own particular circumstances, including his family situation, his income and his occupation.

Counsel for respondent argues in effect that the statements pleaded are not representations and are not in themselves deceptive. Counsel asserts, "They are admonitions, cautionary statements. They have nothing to do with the realm of representation or promise, and hence cannot be deceptive." We think there is merit to this contention and agree with the hearing examiner's disposition of the argument of counsel supporting the complaint on this phase of the case. As the hearing examiner correctly recognized, "adequate" is a relative term, and what is adequate for one may not be adequate for another.

Order

54 F.T.C.

Where terms similar to "adequate" have been considered by the courts or by the Commission in other cases, it has consistently been held that in the absence of direct evidence of their actual deceptive use, no inhibition will be entered against them.<sup>2</sup> In the instant case the Commission has concluded that it would be unwarranted in finding that respondent's use of the term "adequate" is deceptive. In fact, record evidence to the contrary is uncontroverted.

Counsel for respondent in the answering brief on appeal invites the Commission to give further consideration to a motion of respondent, earlier denied by the Commission, to strike and delete portions of the appeal brief of counsel supporting the complaint. Because of the foregoing considerations leading to disposition of this proceeding on the merits, the Commission deems it unnecessary to express itself further on this and other matters urged in the appeal brief and the answer in opposition thereto filed on behalf of respondent.

The appeal of counsel supporting the complaint is denied. An appropriate order will be entered.

ORDER DENYING APPEAL FROM INITIAL DECISION

Counsel supporting the complaint having filed an appeal from the hearing examiner's initial decision containing an order dismissing the complaint in this proceeding; and the matter having been considered upon the whole record, including the briefs and oral arguments of counsel; and

The Commission, for the reasons stated in its accompanying opinion, having concluded that the hearing examiner's dismissal of the complaint was appropriate:

*It is ordered*, That the appeal of counsel supporting the complaint be, and the same hereby is, denied.

<sup>2</sup> *Kidder Oil Co. v. Federal Trade Commission*, 117 F. 2d 892 (C.A. 7, 1941); *Washington Mushroom Industrials, Inc., et al.*, Docket No. 6273, decided October 24, 1956.

## Decision

IN THE MATTER OF  
NATIONAL CLEARANCE BUREAU ET AL.

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

*Docket 6648. Complaint, Oct. 11, 1956—Decision, Oct. 31, 1957*

Order requiring a company in East Orange, N.J., to cease selling—mainly to credit bureaus maintained by business and professional organizations, collection agencies, and finance companies—and using in its own collection business, printed “skip tracing” forms, cards, and envelopes designed to obtain information concerning alleged delinquent debtors by subterfuge through falsely representing connection with the United States Government by use of such headings as “Treasurer’s Office Disbursement Notice,” etc., and a printed picture of an eagle or the Treasury Department building or a like structure, and representing further that a check for a sum of money would be forwarded to the person addressed upon receipt of the completed questionnaire.

*Mr. Edward F. Downs* and *Mr. Garland S. Ferguson* supporting the complaint.

*Fast & Fast*, by *Mr. Herman L. Fast* and *Mr. Kenneth Fast*, of Newark, N.J., for respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its complaint against the above-named respondents on October 11, 1956, charging them with having engaged in certain unfair and deceptive acts and practices, in violation of the Federal Trade Commission Act. Said complaint charges, in substance, that respondents, in connection with their business of obtaining information on delinquent debtors for customers, have used certain forms in which they have falsely represented a connection with the United States Government and that the debtors who supply the information requested in the forms will receive a sum of money. Respondents, after being duly served with said complaint, appeared by counsel and filed their answer in which they admitted having used the forms referred to in the complaint, but denied that said forms contained any false representations as alleged in the complaint.

Pursuant to notice, hearings on the charges were held in New York, New York, on January 3, and March 14, 1957, before the undersigned hearing examiner, theretofore duly designated to hear this proceeding. At said hearings testimony and other evidence