

IN THE MATTER OF
PIPER BRACE SALES CORP. ET AL.

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

Docket 6949. Complaint, Nov. 20, 1957—Decision, June 10, 1958

Consent order requiring sellers in Kansas City, Mo., to cease misrepresenting in newspaper advertisements the qualities and unique nature of their trusses or hernia supports, and disparaging competitive products.

Mr. Morton Nesmith and Mr. John J. Mathias for the Commission.
Mr. Solbert M. Wasserstrom, of Kansas City, Mo., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on November 20, 1957, charging Respondents with violation of the provisions of the Federal Trade Commission Act by the dissemination of false advertisements relating to certain devices consisting of trusses designated "Rupture-Easer," "Rupture-Gard," and "PiPeer Golden Crown Truss."

Thereafter, on March 20, 1958, Respondents Piper Brace Sales Corp., by Henry G. Nelkin, its president; Henry G. Nelkin, individually; Nedwyn R. Nelkin, individually; Eugene Goldstein, individually; their attorney, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

In the agreement it is recommended that the complaint herein be dismissed, insofar as it relates to respondents Anne R. Nelkin, Cecil Nelkin, and Marie H. Dinger, for reasons set forth in an affidavit executed by respondent Henry G. Nelkin, and attached to and made a part of said agreement. Respondent Henry G. Nelkin, in said affidavit, sets forth that respondents Anne R. Nelkin, Cecil Nelkin, and Marie H. Dinger, stockholders in the respondent corporation, have not been, and will not in the future be, consulted concerning the lay-out, wording, or content of the respondent corporation's advertising or display materials. The agreement then sets forth the recommendation that the complaint be dismissed as to these three respondents, and the order contained therein provides for such dismissal without prejudice.

The agreement identifies respondent Piper Brace Sales Corp. as a Missouri corporation; respondents Henry G. Nelkin and Nedwyn R. Nelkin as officers and Eugene Goldstein as a stockholder thereof; and states that these three individuals dominate, control, and direct the policies, acts, and practices of the corporate respondent, all having the same address, 811 Wyandotte Street, Kansas City, Mo.

Respondents signatory to the agreement admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Said respondents waive any further procedure before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with the agreement. All parties agree that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement; that the order to cease and desist, as contained in the agreement, when it shall have become a part of the decision of the Commission, shall have the same force and effect as if entered after a full hearing, and may be altered, modified or set aside in the manner provided for other orders; that the complaint herein may be used in construing the terms of said order; and that the agreement is for settlement purposes only and does not constitute an admission by respondents signatory thereto that they have violated the law as alleged in the complaint.

It is specifically set forth in the agreement that no provision is made in the order contained therein respecting the charge in the complaint based upon the representation "That the devices cannot slip." Counsel supporting the complaint state in the agreement, however, that they are satisfied that because of the design of these devices and the manner in which they are worn, it is impossible to prove that they will slip; and said counsel recommend that said charge of the complaint be dismissed. They further state "that prohibiting the representation 'That the rupture cannot "come out" while an individual is wearing said devices' is adequate."

After consideration of the allegations of the complaint and the provisions of the agreement and the proposed order, the hearing examiner is of the opinion that such order constitutes a satisfactory disposition of this proceeding. Accordingly, in consonance with the terms of the aforesaid agreement, the hearing examiner accepts the agreement containing consent order to cease and desist; finds that

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the Commission has jurisdiction over the respondents and over their acts and practices as alleged in the complaint; and finds that this proceeding is in the public interest. Therefore,

It is ordered, That respondents Piper Brace Sales Corp., and its officers, and Henry G. Nelkin and Nedwyn R. Nelkin, individually and as officers of said corporation, and Eugene Goldstein, individually and as a stockholder of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of devices designated as Rupture-Easer, Rupture-Gard, and Piper Golden Crown Truss, or any product or device of substantially similar construction or design; whether sold under the same names or any other name or names, do forthwith cease and desist from, directly or indirectly:

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

(a) That the rupture cannot "come out" while an individual is wearing said devices;

(b) That the devices are the most effective trusses or hernia supports devised;

(c) That the devices operate upon a different principle from other trusses in common use, that is, the principle of closing the opening of the inguinal canal by means of external pressure; or that the control of rupture upon such principle is new;

(d) That competitive devices are old-fashioned, outmoded, torturing, or binding, or otherwise inferior to said devices;

2. Disseminating, or causing to be disseminated, any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said devices, which advertisement contains any of the representations prohibited in paragraph 1 hereof;

3. Placing in the hands of wholesalers, or retailers or others, a means and instrumentality by and through which they may deceive and mislead the purchasing public concerning said devices in the respects set out in paragraph 1 above.

It is further ordered, That the complaint herein, insofar as it relates to respondents Anne R. Nelkin, Cecil Nelkin, and Marie H. Dinger, be, and the same hereby is, dismissed without prejudice to the right

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of the Commission to take such action in the future as the facts may then warrant.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the following allegation of paragraph 7 (a) thereof :

"The pad on such devices can slip * * *."

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to section 3.21 of the Commission's rules of practice, the initial decision of the hearing examiner shall, on the 10th day of June 1958, become the decision of the Commission; and, accordingly :

It is ordered, That respondents Piper Brace Sales Corp., a corporation, and Henry G. Nelkin and Nedwyn R. Nelkin, individually and as officers of said corporation, and Eugene Goldstein, individually and as a stockholder of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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IN THE MATTER OF
GOLDMAN JEWELRY CO. ET AL.

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

Docket 7054. Complaint, Jan. 28, 1958—Decision, June 10, 1958

Consent order requiring sellers of jewelry and other merchandise in Kansas City, Mo., to cease representing falsely in newspaper advertisements and otherwise that their commodities such as bone china cups and saucers, binoculars, and laprobes were being offered at reduced prices.

Mr. Thomas A. Ziebarth for the Commission.

Mr. Jules E. Kohn, of Kansas City, Mo., for respondents.

INITIAL DECISION BY ABNER E. LIPSCOMB, HEARING EXAMINER

The complaint herein was issued on January 28, 1958, charging respondents with violation of the Federal Trade Commission Act by falsely and deceptively advertising the customary and regular prices of their jewelry and other commodities, and the savings to purchasers resulting therefrom.

Thereafter, on April 15, 1958, respondents, their counsel, and counsel supporting the complaint herein entered into an agreement containing consent order to cease and desist, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter submitted to the hearing examiner for consideration.

The agreement identifies corporate respondent Goldman Jewelry Co. as a Missouri corporation, with its office and principal place of business located at 211 Altman Building, Kansas City, Mo.; individual respondents Fred Goldman, Sr., and George L. Goldman as president and secretary-treasurer, respectively, of the corporate respondent; and individual respondents Fred Goldman, Jr., and Richard A. Goldman as substantial stockholders in the corporate respondent and active in its management; the individual respondents having the same address as the corporate respondent.

Respondents admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations.

Respondents waive any further procedure before the hearing examiner and the Commission: the making of findings of fact and