

IN THE MATTER OF
FLUIDLESS CONTACT LENSES, INC., ET AL.

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

Docket 7026. Complaint, Jan. 10, 1958—Decision, Sept. 24, 1958

Consent order requiring manufacturers in New York City to cease making a variety of misrepresentations in newspaper advertising and promotional materials concerning their "Airflo" contact lenses, including claims that the lenses could be fitted and worn all day without discomfort and irritation, were better than eyeglasses and other contact lenses, were unbreakable, were worn by prominent named actresses and athletes and over 100,000 persons, etc.

Mr. Frederick McManus for the Commission.

Paskus, Gordon & Hyman, by *Mr. Lenard H. Mandel*, of New York, N.Y., for respondents.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 10, 1958, issued and subsequently served its complaint in this proceeding against respondents Fluidless Contact Lenses, Inc., a corporation existing and doing business under and by virtue of the laws of the State of New York, and Donald L. Golden and Norma Golden, individually and as officers of the corporate respondent.

On July 24, 1958, there was submitted to the undersigned hearing examiner an agreement between respondents Fluidless Non-Tact Lenses, Inc., formerly known as Fluidless Contact Lenses, Inc., and Donald L. Golden, and counsel supporting the complaint providing for the entry of a consent order. By the terms of said agreement, 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. By such agreement, respondents waive any further procedural steps before the hearing examiner and the Commission; waive the making of findings of fact and conclusions of law; and waive all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with this agreement. Such agreement further provides that it disposes of all of this proceeding

as to all parties, but the order does not absolutely prohibit the representation that the use of respondents' lenses will correct defects in vision that require bifocal lenses since satisfactory evidence indicates that contact lenses are now being constructed that will correct defects in vision in the cases of some persons who require bifocal lenses. Said agreement further provides that the record on which this initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the latter shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint; and that the following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents, and, when so entered, it 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; and that the complaint may be used in construing the terms of the order.

The hearing examiner having considered the agreement and proposed order, and being of the opinion that they provide an appropriate basis for settlement and disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings made, and the following order issued.

1. Respondent Fluidless Non-Tact Lenses, Inc., formerly known as Fluidless Contact Lenses, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 11 West 42d Street, in New York, N.Y.

Individual respondent Donald L. Golden is president of said corporation and as such formulates, directs and controls the acts, practices and policies of the corporate respondent. His address is 19285 Canterbury Road, Detroit 21, Mich.

Respondent Norma Golden (as shown by an affidavit which is attached to such agreement and made a part thereof) does not now and never has had any part in directing, formulating or controlling the acts, practices and policies of the corporate respondent.

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

Order

55 F.T.C.

ORDER ¹

It is ordered, That respondent Fluidless Non-Tact Lenses, Inc., formerly known as Fluidless Contact Lenses, Inc., a corporation, and its officers, and respondent Donald L. Golden, individually and as an officer 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 and distribution of their contact lenses known as "Airflo" or any other contact lenses of substantially the same construction or properties, do forthwith cease and desist from directly or indirectly:

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 by implication that:

(a) Respondents' contact lenses can be fitted without discomfort.

(b) There is never irritation or discomfort from wearing respondents' lenses.

(c) All persons can wear respondents' lenses all day without discomfort; or that any person can wear respondents' lenses all day without discomfort except after that person has become fully adjusted thereto.

(d) Respondents' contact lenses will adhere to the eyes under all conditions and circumstances of use.

(e) Respondents' contact lenses will provide more protection to the eyes than eyeglasses under all circumstances.

(f) Respondents' contact lenses will provide more ventilation to the eyes than all other contact lenses.

(g) Respondents' contact lenses will correct all defects in vision.

(h) Respondents' contact lenses will correct defects in vision in all cases which require bifocal lenses.

(i) Respondents' contact lenses are unbreakable.

(j) Respondents' contact lenses are revolutionary or are a new type of corneal lenses.

(k) Respondents' contact lenses will give better correction of vision than eyeglasses, in all cases.

(l) Respondents' contact lenses can be tried without financial risk unless such is the fact.

¹ Published as modified by Commission order of August 28, 1959.

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(m) Any named actresses, athletes or other persons wear and recommend respondents' contact lenses, unless such is the fact.

(n) Eyeglasses can always be discarded upon the purchase of respondents' contact lenses.

(o) Purchasers are protected as to safety of respondents' lenses by a policy of insurance.

(p) Grooving or channeling in contact lenses increases their weight or interferes with vision.

(q) The number of persons who have been fitted by respondents' lenses is greater than is the fact.

(r) Respondents' lenses are safer, more comfortable or better fitting than other contact lenses for the reason that they do not rest upon the pupil of the eye.

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 contact lenses, which advertisement contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent Norma Golden.

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 24th day of September 1958, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents Fluidless Non-Tact Lenses, Inc., formerly known as Fluidless Contact Lenses, Inc., a corporation, and Donald L. Golden, individually and as an officer of corporate respondent, 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.

IN THE MATTER OF
GENERAL MOWER CORPORATION ET AL.

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

Docket 7059. Complaint, Feb. 7, 1958—Decision, Sept. 24, 1958

Consent order requiring distributors of power lawn mowers in Buffalo, N.Y., to cease—in newspaper advertising and in letters, price lists, brochures, and circulars mailed to retailers in various States—representing as the prices at which their mowers were regularly sold at retail, “list prices” which were in fact fictitious.

Mr. Ames W. Williams supporting the complaint.

Jaekle, Fleischmann, Kelly, Swart & Augspurger by *Mr. John B. Walsh*, of Buffalo, N.Y., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

On February 7, 1958, the Federal Trade Commission issued a complaint alleging that General Mower Corporation, a corporation, Louis Faxstein, Harry Faxstein, Max Faxstein and Arthur Ganger, individually and as officers of said corporation, herein-after referred to as respondents, had violated the provisions of the Federal Trade Commission Act by making fictitious pricing and savings claims for its power lawn mowers.

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 and assistant 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; the record herein shall consist solely of the complaint and the agreement; respondents waive the requirement that the decision must contain a statement of findings of fact and conclusions 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