

IN THE MATTER OF
BERNARD J. SIMMONS

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

Docket 7348. Complaint, Jan. 6, 1959—Decision, May 26, 1959

Consent order requiring a seller of contact lenses in Philadelphia, Pa., to cease advertising falsely that his lenses were imported from Germany, were never irritating, could be worn all day with complete comfort by all, stayed in place under all conditions including violent exercise and swimming, were unbreakable, better than eyeglasses, were a new type of contact lenses and could not damage the eye; and that his summary of an Army Medical Research Laboratory Report set out all the disadvantages of contact lenses contained therein.

Mr. Kent P. Kratz supporting the complaint.

Mr. I. Raymond Kremer, of Philadelphia, Pa., for respondent.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondent on January 6, 1959, charging him with the use of unfair and deceptive acts and practices in commerce, in violation of the Federal Trade Commission Act, by falsely advertising the origin, effectiveness, wearing comfort and safety of the contact lenses sold by him. After being served with said complaint respondent appeared by counsel and entered into an agreement, dated April 2, 1959, containing a consent order to cease and desist purporting to dispose of all of this proceeding as to all parties. Said agreement, which has been signed by respondent, by counsel for said respondent, and by counsel supporting the complaint, and approved by the director and assistant director of the Commission's Bureau of Litigation, has been submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

Respondent, pursuant to the aforesaid agreement, has admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreement further provides that respondent waives any further procedural steps before the hearing examiner and the Com-

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mission, the making of findings of fact or conclusions of law and all of the rights he may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreement. It has been agreed that the order to cease and desist issued in accordance with said agreement shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreement, and that said agreement is for settlement purposes only and does not constitute an admission by respondent that he has violated the law as alleged in the complaint.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreement containing consent order, and it appearing that the order provided for in said agreement covers all the allegations of the complaint and provides for an appropriate disposition of this proceeding as to all parties, said agreement is hereby accepted and is ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Bernard J. Simmons is an individual with his principal office and place of business located at 13th and Arch Streets, Philadelphia, Pa.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent hereinabove named. The complaint states a cause of action against said respondent under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That Bernard J. Simmons, individually or trading under any name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his contact lenses, do forthwith cease and desist from, directly or indirectly:

- A. 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

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Commission Act, which advertisement represents, directly or by implication:

- (1) That respondent's said contact lenses:
 - (a) Are imported from Germany;
 - (b) Are never irritating or will be comfortable to all persons;
 - (c) Can be worn all day by all persons in complete comfort;
 - (d) Stay in place under all conditions and cannot be displaced during swimming and other activities involving violent exercise;
 - (e) Are unbreakable outside the eye;
 - (f) Provide better vision in all cases than eyeglasses;
 - (g) Can completely replace eyeglasses;
 - (h) Are a new type of contact lenses;
 - (i) Cannot damage the eye.
- (2) That respondent's summary of U.S. Army Medical Research Laboratory report No. 99 sets out all the disadvantages of contact lenses contained in said report.
- (3) Through the use of a summary made by respondent of a report of any group, organization, or individual, that said summary contains all of the material facts set out in the report, unless such is the fact.

B. 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 A hereof.

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 26th day of May 1959, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist.

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IN THE MATTER OF
LOUIS WEINGEROFF ET AL.
DOING BUSINESS AS WEINGEROFF & SON

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

Docket 7367. Complaint, Jan. 22, 1959—Decision, May 27, 1959

Consent order requiring manufacturers and distributors in Providence, R.I., engaged in the sale of sets of their own costume jewelry packaged with pens and pencils purchased from Waterman Pen Co., Inc., to cease stamping the name "Waterman's" and the company's trade-mark on the display box and an insert; representing falsely on a "seal" type insert in the display box that the contents were "24 Kt Gold Plated"; preticketing the sets with fictitiously high prices; and advertising falsely that they were advertised in Life Magazine and The Saturday Evening Post.

Mr. Charles S. Cox supporting the complaint.

Mr. Ralph P. Semonoff, of Providence, R.I., for respondents.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

The complaint in this proceeding alleges that Louis Weingeroff and Frederick Weingeroff, individually and as copartners doing business as Weingeroff & Son, hereinafter referred to as respondents, have misrepresented the source, price, and quality of their merchandise, in violation of the provisions of the Federal Trade Commission Act. In addition the complaint charges that respondents have made misleading and deceptive statements by claiming that their products have been advertised in Life Magazine and the Saturday Evening Post when they have not been so advertised.

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.

Under the agreement, the respondents admit the jurisdictional facts alleged in the complaint. The parties agree, among other things, that the cease and desist order there set forth may be entered without further notice and have the same force and effect as if entered after a full hearing, and the document includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith.