

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

FRED B. MILLER ET AL., TRADING AS
MILLER LABORATORIES, ETC.

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

Docket 7740. Complaint, Jan. 12, 1960—Decision, Apr. 14, 1960

Consent order requiring distributors in Hagerstown, Md., to cease representing falsely in advertisements in newspapers and magazines and otherwise that their "Miller Truss" would bring permanent relief from ruptures, was custom fitted, was more effective than competitive products, was guaranteed to control ruptures 100%, etc.

Mr. John W. Brookfield, Jr., for the Commission.
Respondents, for themselves.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) on January 12, 1960, issued its complaint herein, charging the respondents Fred B. Miller and Robert H. Miller, individuals and partners, trading as Miller Laboratories and as Fred B. Miller, with having violated the provisions of the Federal Trade Commission Act, and respondents were duly served with process.

On February 26, 1960, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval an "Agreement Containing Consent Order To Cease And Desist," which had been entered into by and between respondents and the attorney supporting the complaint, under date of February 23, 1960, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreement, the hearing examiner finds that said agreement, both in form and in content, is in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreement the parties have specifically agreed to the following matters:

1. Respondents Fred B. Miller and Robert H. Miller are individuals and partners, trading and doing business under the names Miller Laboratories and Fred B. Miller, with their office and principal place of business located at 115 East Baltimore Street, in the City of Hagerstown, State of Maryland.

2. 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.

3. This agreement disposes of all of this proceeding as to all parties.

4. Respondents waive:

- (a) Any further procedural steps before the hearing examiner and the Commission;

- (b) The making of findings of fact or conclusions of law; and

- (c) 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.

5. The record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement.

6. This agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

7. This 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.

8. The following order to cease and desist may be entered in this proceeding by the Commission without further notice to respondents. When so entered it shall have the same force and effect as if entered after a full hearing. It may be altered, modified or set aside in the manner provided for other orders. The complaint may be used in construing the terms of the order.

Upon due consideration of the complaint filed herein and the said "Agreement Containing Consent Order To Cease And Desist," the latter is hereby approved, accepted and ordered filed, the same not to become a part of the record herein, however, unless and until it becomes a part of the decision of the Commission. The hearing examiner finds from the complaint and the said "Agreement Containing Consent Order To Cease And Desist" that the Commission has jurisdiction of the subject-matter of this proceeding and of the respondents herein; that the complaint states a legal cause for complaint under the Federal Trade Commission Act against the respondents, both generally and in each of the particulars alleged therein; that this proceeding is in the interest of the public; that the following order as proposed in said agreement is appropriate for the just disposition of all of the issues in this proceeding as to all of the parties hereto; and that said order therefore should be, and hereby is, entered as follows:

It is ordered, That respondents Fred B. Miller and Robert H. Miller, individually or as partners trading as Miller Laboratories or Fred B. Miller, or under any other trade name or names, 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 Miller Truss, or any other product or device of substantially similar construction or design, whether sold under the same name or any other name or names, 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 by implication:

(a) That the use of respondents' devices gives lasting relief unless limited to the period of time in which the device is actually worn;

(b) That the use of respondents' devices gives permanent relief or ends suffering;

(c) That respondents' devices are custom fitted or in all cases are the correct truss;

(d) That respondents' devices will afford results that are different from those afforded by all other trusses;

(e) That respondents' devices are nature's way of closing or decreasing the size of hernal openings, or are nature's way of holding hernias;

(f) That respondents' devices will heal, cure or decrease the size of hernal openings;

(g) That the use of respondents' devices will aid blood circulation or strengthen the muscles;

(h) That respondents' devices will retain or hold all ruptures or hernias, or control ruptures 100%;

(i) That respondents' devices are guaranteed, unless the nature and extent of the guarantee and the manner of performance thereunder are clearly and conspicuously disclosed in connection with the representation of the guarantee;

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.

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 14th day of April, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents Fred B. Miller and Robert H. Miller, individuals and partners, trading as Miller Laboratories and as Fred B. Miller, 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

RECORDS, INC., ET AL.

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