

IN THE MATTER OF
CHAS. PFIZER & CO., INC.

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

Docket 7487. Complaint, May 14, 1959—Decision, May 23, 1960

Order dismissing, following voluntary abandonment of the challenged practices two years previously, complaint charging a large drug manufacturer with falsely representing, in advertising its antibiotic "Sigmamycin," that fictitiously named physicians were actual doctors who prescribed the product.

Mr. Edward F. Downs supporting the complaint.

Dewey, Ballantine, Bushby, Palmer & Wood by *Mr. John E. F. Wood*, *Mr. Charles E. Stewart, Jr.*, and *Mr. L. Robert Fullem* of New York, N.Y., for respondent.

INITIAL DECISION BY EDWARD CREEL, HEARING EXAMINER

On May 14, 1959 the Federal Trade Commission issued its complaint herein alleging that respondent had engaged in false and misleading advertising by representing that fictitiously named physicians were actual physicians who prescribed its product "Sigmamycin." Respondent filed its answer admitting the use of this advertising and denying that such advertising was false, misleading or deceptive. A hearing was held at which evidence was received in support of the allegations of the complaint and counsel supporting the complaint rested his case-in-chief. Thereafter respondent filed a motion to dismiss the complaint and a hearing was held at which evidence was received in support of this motion.

Upon consideration of the entire record, as it now stands before respondent offers its evidence in defense, it is found that the allegations in paragraphs 1 through 6 of the complaint are proved and they are incorporated herein by reference, as a part of this initial decision and all of the statements in paragraphs 1 through 6 of the complaint are found to be facts.

It is further found that two of the grounds stated for respondent's motion are supported by the evidence and they are found as facts as follows:

(1) The acts complained of in the instant proceeding occurred approximately two years prior to the issuance of the complaint herein.

(2) Prior to issuance of the complaint herein, and prior to any knowledge on the part of the respondent that any governmental

investigation was contemplated, the respondent voluntarily abandoned the acts complained of in the complaint and instituted appropriate procedures to insure that such acts would not be repeated.

It is further found that the circumstances of abandonment indicate that there is no reasonable likelihood that the acts hereinabove found to have been done will be repeated.

Although the advertising involved by respondent had the capacity to lead some of those to whom the advertisements were sent to believe that the physicians depicted in the advertising were in fact actual persons, it would appear that this was not a matter of great significance since there were many physicians prescribing the product for their patients. Respondent concedes that it now believes that the advertising may have had the capacity to deceive some of the physicians to whom it was sent and the record shows that procedures have been adopted requiring consultation between several members of respondent's management prior to the approval of any advertising to guard against any recurrence of the approval of questionable advertising. The advertising involved here was the product of an advertising agency and was used by respondent without its careful consideration. The record further shows that upon learning that its use of fictitious names in its advertising had been criticized in a magazine article, which had brought forth further criticism from individuals, respondent's management abandoned the practice prior to its being aware that the Federal Trade Commission was to commence an investigation of the matter. Respondent made a public announcement of its abandonment. It is believed that the practice charged has been completely abandoned and because of the circumstances of its abandonment that it is improbable that it will ever be resumed by the present management of respondent or any successor. If the product involved had been a proprietary product or if it had been a prescription drug which was not in widespread use, the issue would be entirely different, but since respondent could have truthfully advertised that thousands of physicians prescribe its product for various infections the device of using a few fictitious names or, as respondent would have it, "symbolic" names, appears less effective than a statement of the literal truth. It is not difficult to be persuaded that respondent's management was sincere and sound in its conclusion that the advertising was both questionable and ineffective. Further, it would seem that in the event a resumption of the practice is later contemplated the prospect of another Commission proceeding with its attendant publicity would dissuade respondent.

It is concluded that the acts herein found to have been engaged

in by respondent were unfair and deceptive and constitute violations of the Federal Trade Commission Act, but it is also concluded that they were abandoned prior to any knowledge on the part of respondent that the Commission was commencing an investigation of these acts and it appears highly improbable that they will be repeated or resumed.

ORDER

Respondent's motion to dismiss is granted and it is ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such further action as circumstances may warrant.

DECISION OF THE COMMISSION

Counsel in support of the complaint having filed an appeal from the hearing examiner's initial decision dismissing the complaint herein without prejudice, and the Commission having considered the matter on the record, including briefs and oral argument of counsel, and having determined that the initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the appeal of counsel in support of the complaint be, and it hereby is, denied.

It is further ordered, That the hearing examiner's initial decision, filed January 14, 1960, wherein the complaint was dismissed without prejudice be, and it hereby is, adopted as the decision of the Commission.