

Pursuant to Section 6.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 7th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondent herein shall, within sixty (60) days 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
COMMUNITY OPTICIANS ET AL.

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

Docket 7856. Complaint, Apr. 6, 1960—Decision, Sept. 7, 1960

Consent order requiring Boston opticians to cease falsely advertising their contact lenses by such claims as that the lenses could be worn all day in complete comfort, and by all persons, that wearing them never caused irritation or discomfort, and that they were superior to competing lenses.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Community Opticians, a corporation, and Charles W. Holden, Emil J. Arnold and Louis Lewis, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Community Opticians is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and

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principal place of business located at 76 Summer Street, Boston, Mass. Individual respondents Charles W. Holden, Emil J. Arnold and Louis Lewis are officers of said corporation. They formulate, direct and control the policies of the corporate respondent. The address of the individual respondents is the same as that of the corporate respondent.

PAR. 2. The respondents are now, and for some years last past have been, engaged in the advertising, offering for sale and sale, among other things, of corneal contact lenses. Corneal contact lenses are designed to correct errors and deficiencies in the vision of the wearer, and are devices, as "device" is defined in the Federal Trade Commission Act. Respondents have several branch offices in Massachusetts and maintain a branch office in New Hampshire.

PAR. 3. Respondents cause said contact lenses, when sold, to be transported from their place of business in the Commonwealth of Massachusetts to purchasers thereof located in various other States of the United States. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said contact lenses in commerce, as "commerce" is defined in the Federal Trade Commission Act. The volume of business in such commerce has been and is substantial.

PAR. 4. In the course and conduct of their aforesaid business, respondents have disseminated, and have caused dissemination of, advertisements concerning their said devices by the United States mails, and by various other means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, including but not limited to advertisements inserted in newspapers of general circulation for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of said devices; and respondents have also disseminated, and caused the dissemination of, advertisements concerning their said devices by the aforesaid means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their said devices, in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the statements and representations contained in the advertisements disseminated and caused to be disseminated are the following:

. . . See COMMUNITY OPTICIANS NOW for COMMUNITY'S exclusive "all day" contact lenses with the smoother-than-velvet Bev-Vel finish, the kind I'm wearing!!!

* * *

. . . ONLY at Community can you obtain . . . all-day CONTACT LENSES with BEV-VEL finish. . . .

. . . perfected all-day CONTACT LENSES.

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CONTACT LENSES WITH THE EXCLUSIVE BEV-VEL FINISH . . .
NEW Perfect-comfort all day contact lenses, fitted only at Community Opticians.

Never before has there been a contact lens so easy to wear throughout the day.

A brand new process makes this ease and comfort possible. In ten separate operations we slowly micro-polish each all-day contact lens' edge to hitherto unattainable angles . . . This exclusive bev-vel finish lets the eye breathe and tear-flow naturally, prevents any contact of the lens on the eye itself—and now for the first time gives the lens' edge a smooth-as-velvet finish to assure all-day comfort.

PAR. 5. By and through the statements made in said advertisements disseminated and caused to be disseminated, as aforesaid, respondents represented, directly or by implication:

1. All persons can successfully wear respondents' contact lenses.
2. That there is never irritation or discomfort from wearing respondents' contact lenses.
3. Respondents' contact lenses can be worn all day in complete comfort.
4. That respondents' contact lenses are more comfortable to wear than competitive contact lenses.
5. That respondents' contact lenses do not come in contact with the eye of the wearer.
6. That respondents' contact lenses are different than other contact lenses in that respondents' lenses permit air and tears to bathe the cornea of the eye of the wearer.

PAR. 6. The advertisements containing the aforesaid statements and representations were, and are, misleading in material respects and constituted, and now constitute, "false advertisements," as that term is defined in the Federal Trade Commission Act. In truth and in fact:

1. A significant number of persons cannot successfully wear respondents' contact lenses.
2. Practically all persons will experience some irritation and discomfort after starting to wear respondents' contact lenses. In a significant number of cases irritation and discomfort will be prolonged and in some cases will never be overcome.
3. Many persons cannot wear contact lenses all day in complete comfort, and no person can wear said lenses all day in complete comfort, until they have become completely adjusted to them.
4. Respondents' contact lenses are not more comfortable to wear than many competitive contact lenses.
5. Respondents' contact lenses come in contact with the eye of the wearer.

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6. Contact lenses other than respondents' permit air and tears to bathe the cornea of the eye of the wearer.

PAR. 7. The dissemination by the respondents of the false advertisements, as aforesaid, constituted unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Garland S. Ferguson for the Commission.

Singer, Stoneman & Kurland, by *Mr. Franklin N. Flaschner*, of Boston, Mass., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On April 6, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the advertising, offering for sale and sale of corneal contact lenses. On June 30, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreements shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

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Order

1. Corporate respondent Community Opticians of Boston, Inc., erroneously named in the complaint as Community Opticians, is a corporation existing and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 76 Summer Street, Boston, Mass. Individual respondents Charles W. Holden, Emil J. Arnold and Louis Lewis are officers of said corporation. They formulate, direct and control the practices of the corporate respondent. Their address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents Community Opticians of Boston, Inc., a corporation, and its officers, and Charles W. Holden, Emil J. Arnold, and Louis Lewis, individually and as officers of said corporation, their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of their contact lenses, 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, indirectly or by implication that:

(a) All persons can successfully wear respondents' contact lenses.
(b) There is never irritation or discomfort from wearing respondents' contact lenses.

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

(d) Respondents' contact lenses are more comfortable to wear than competitive lenses.

(e) Respondents' contact lenses do not come in contact with the eye of the wearer.

(f) Respondents' contact lenses are different than other contact lenses in that they permit air and tears to bathe the cornea of the eye of the wearer.

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2. Disseminating, or causing the dissemination of, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 above.

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 7th day of September 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein 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.
